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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

8 CFR Parts 270, 274a, and 280

Coast Guard

33 CFR Part 27

Transportation Security Administration

49 CFR Part 1503

[Docket No. DHS–2016–0034]

RIN 1601–AA80

Civil Monetary Penalty Adjustments for Inflation

Correction

In rule document 2016–15673, appearing on pages 42987–43006 in the issue of Friday, July 1, 2016, make the following correction:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS [Corrected]

1. On page 43002, in the first column, on the nineteenth line, amendatory paragraph number 6, appearing in PART 274a, that reads “ ■ 6. In § 4a.8, revise (b) to read as follows:” is corrected as set forth below:

■ 6. In § 274a.8, revise (b) to read as follows:

[FR Doc. C1–2016–15673 Filed 9–8–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 236, 238, 239, 240, 241, and 287

[CBP Dec. 16–14]

Technical Corrections Relating to Issuance of Notices To Appear, Warrants of Removal, Exercise of Power by Immigration Officers, and Standards for Enforcement Activities

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to update various provisions that list specific immigration officials who are authorized to perform various immigration functions, including the issuance of notices to appear, warrants of removal, and arrest warrants. The lists are outdated and do not reflect the current DHS organizational structure. DHS is updating the lists with the specific officials who are currently authorized to perform these various functions. DHS is also making some technical corrections to update nomenclature and outdated references in the affected provisions.

DATES: Effective September 9, 2016.

FOR FURTHER INFORMATION CONTACT: Border Patrol Aspects: Cipriano Encinia, U.S. Border Patrol, *Cipriano.Encinia@cbp.dhs.gov;* Field Operations Aspects: James Ryan Hutton, Office of Field Operations, *James.Hutton@cbp.dhs.gov;* Air and Marine Aspects: Daniel Jordan, Air and Marine Operations, *daniel.a.jordan@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) was established on January 24, 2003, pursuant to the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, codified at 6 U.S.C. 101, *et seq.*

Section 441 of the HSA transferred from the Commissioner of Immigration and Naturalization Service to DHS all border security functions, personnel, assets, and liabilities. *See* 6 U.S.C. 251. Pursuant to section 1502 of the HSA, on November 25, 2002, the President submitted to Congress a reorganization plan. *See* 6 U.S.C. 542. On January 30, 2003, the President submitted a modified reorganization plan, which provided that the Customs Service, now, U.S. Customs and Border Protection (CBP), would contain, among other things, the resources and missions relating to borders and ports of entry of the Customs Service and the Immigration and Naturalization Service. This modified reorganization plan also provided that the Bureau of Border Security, now, the U.S. Immigration and Customs Enforcement (ICE), would contain, among other things, the detention and removal program, the intelligence program, and the investigations program of the Immigration and Naturalization Service.

Additionally, section 451 of the HSA established the Bureau of Citizenship and Immigration Services, now, the U.S. Citizenship and Immigration Services (USCIS), and transferred to it from the Commissioner of the former Immigration and Naturalization Service all adjudications and benefit programs. *See* 6 U.S.C. 271.

Under sections 1101 and 1102 of the HSA, the Department of Justice, Executive Office for Immigration Review (EOIR) retained its functions relating to the immigration and naturalization of aliens. *See* 6 U.S.C. 521.

On June 13, 2003 and November 4, 2005, DHS published two final rules in the **Federal Register** (68 FR 35273 and 70 FR 67087) to conform the text of title 8, Code of Federal Regulations (CFR) parts 236, 239, 241, and 287 to the organizational structures established by the HSA and reorganization plans. Subsequently, the DHS organizational structure has evolved, and this rule revises various sections in these parts to reflect DHS's current structure. The organizational structure described in 8 CFR parts 238, 240, 241, and 287 predates the creation of DHS, and this rule updates various sections in these parts. In addition, DHS is making some technical corrections to update nomenclature and outdated references in the affected provisions. We summarize below the provisions in title 8 CFR that we are updating.

A. Apprehension, Custody, and Detention

Title 8, CFR part 236, subpart A (8 CFR part 236, subpart A) describes the procedures for apprehending, detaining, and removing aliens under the Immigration and Nationality Act. Specifically, 8 CFR 236.1 refers to lists of immigration officials in § 287.5(e)(2) and (e)(3) of the chapter who are authorized to issue a warrant of arrest or to serve a warrant of arrest and lists officials authorized to make custody decisions.

B. Expedited Removal Proceedings

Title 8, CFR part 238 (8 CFR part 238) describes the procedures for expedited removal of aggravated felons under the Immigration and Nationality Act. Specifically, 8 CFR 238.1 defines a "deciding Service officer" and "issuing Service officer". It also refers to a list of immigration officials in § 239.1 of the chapter who are authorized to issue notices to appear and refers to a list of immigration officials in § 287.5(e)(2) of the chapter who are authorized to issue warrants of arrest.

C. Notice To Appear

Title 8, CFR part 239 (8 CFR part 239) describes the procedures for the initiation of removal proceedings under the Immigration and Nationality Act. Specifically, 8 CFR 239.1 provides that any immigration officer, or supervisor thereof, performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such alien, and lists the additional officers who are authorized to issue notices to appear.

D. Voluntary Departure—Authority of the Service

Title 8, CFR part 240, subpart C (8 CFR part 240, subpart C) describes procedures and conditions regarding the granting of voluntary departures from the United States. Specifically, 8 CFR 240.25 lists the officers who are authorized to permit aliens to depart voluntarily.

E. Warrant of Removal

Title 8, CFR part 241, subpart A (8 CFR part 241, subpart A) describes immigration post-hearing detention and removal procedures. Specifically, 8 CFR 241.2 lists the immigration officials who are authorized to issue warrants of removal.

F. Exercise of Power by Immigration Officers

Title 8, CFR part 287 (8 CFR part 287) describes the powers and duties of field officers. Specifically, 8 CFR 287.5 addresses the power and duties of immigration officers, including the power to interrogate and administer oaths, patrol the border, arrest, conduct searches, execute and issue warrants, and carry firearms, and lists the officials who are authorized to perform these functions. Also, 8 CFR 287.8 describes the standards for enforcement activities conducted by immigration officers.

G. Regulatory Amendment

The lists of immigration officials in 8 CFR 236.1, 238.1, 239.1, 240.25, 241.2, 287.5, and 287.8 have not been updated to reflect the current organizational structure of DHS. As such, these regulations include position titles that no longer exist in the DHS organization and do not include position titles that were established after the creation of DHS. Therefore, it is necessary to amend these regulations to authorize the appropriate officials within DHS to perform the listed functions and to remove outdated references to former position titles. To accurately reflect the current DHS organizational structure, this final rule amends 8 CFR 236.1, 238.1, 239.1, 240.25, 241.2, 287.5, and 287.8 by removing the outdated list of personnel authorized to perform various immigration functions, such as issuing notices to appear, warrants of removal, and arrest warrants and by adding language that authorizes the appropriate DHS officials to perform these functions.

DHS is also making several additional technical corrections to update outdated references in these sections. Specifically, DHS is updating 8 CFR 236.1 and 238.1 to replace several outdated references to sections in 8 CFR part 3 with sections in 8 CFR part 1003. As provided in 8 CFR 3.0, the regulations of the Executive Office for Immigration Review (EOIR) relating to the adjudication of immigration matters before immigration judges and the Board of Immigration Appeals are now located in 8 CFR chapter V, part 1003, rather than in part 3. In a final rule published in the **Federal Register** on February 28, 2003 (68 FR 9824), the Department of Justice moved the provisions to reflect the division of authority between DHS and EOIR after the enactment of the HSA. DHS is also removing the obsolete references to the title "Commissioner" and "Assistant Secretary for ICE" and replacing them with the current title "Assistant Secretary/Director of ICE" in 8 CFR 236.1, 287.5, and 287.8. These changes will reflect the current DHS structure.

II. Statutory and Regulatory Requirements

A. Inapplicability of Public Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act (5 U.S.C. 553(b)), rulemakings generally require prior notice and comment, subject to specified exceptions. As provided in 5 U.S.C. 553(b)(A) and (B), this procedure does not apply to rules of agency organization, procedure, practice; or when the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. This final rule amends the regulations to reflect the correct position titles for those officials who are authorized to issue notices to appear, warrants of removal, arrest warrants, and to perform various additional immigration functions and makes some technical corrections to update nomenclature and outdated references in the affected provisions. DHS finds that this is a rule of agency organization, procedure, or practice, which is not subject to notice and comment rulemaking. DHS also finds that good cause exists to issue the rule without prior notice and comment and that this procedure is not necessary because the rule has no substantive impact, is technical in nature, and it relates to management, organization, procedure, and practice. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

B. The Regulatory Flexibility Act and Executive Orders 12866 and 13563

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866, as supplemented by Executive Order 13563.

List of Subjects

8 CFR Parts 236, 239, and 241

Administrative practice and procedure, Aliens, Immigration.

8 CFR Parts 238 and 240

Administrative practice and procedure, Aliens.

8 CFR Part 287

Immigration, Law enforcement officers.

Amendments to Regulations

For the reasons set forth above, parts 236, 238, 239, 240, 241, and 287 of title 8 of the Code of Federal Regulations (8 CFR parts 236, 238, 239, 240, 241, and 287) are amended as set forth below.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 1. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

§ 236.1 [Amended]

■ 2. Amend § 236.1 as follows:
■ a. In paragraph (c)(7), remove the word "Commissioner" and add in its place "Assistant Secretary/Director of ICE";
■ b. In paragraph (c)(10), remove the reference to "§ 3.19" and add in its place "§ 1003.19";
■ c. In paragraph (c)(11), remove the reference to "§ 3.19(h)" and add in its place "§ 1003.19(h)";
■ d. In paragraph (d)(1), remove the reference to "§ 3.19" and add in its place "§ 1003.19";
■ e. In paragraph (d)(3)(i), remove the reference to "§ 3.38" and add in its place "§ 1003.38";
■ f. In paragraph (d)(4), remove the reference to "§ 3.19(i)" and add in its place "§ 1003.19(i)".
■ g. In paragraph (f), remove the reference to "§ 3.19(g)" and add in its place "§ 1003.19(g)".

PART 238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

■ 3. The authority citation for part 238 continues to read as follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

§ 238.1 [Amended]

■ 4. In § 238.1 amend paragraph (b)(1)(iii) by removing the reference to "§ 3.41" and adding in its place "§ 1003.41".

PART 239—GENERAL PROVISIONS

■ 5. The authority citation for part 239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; Homeland Security Act of 2002, Public Law 107–296; 8 CFR part 2.

■ 6. Amend § 239.1 by revising paragraphs (a)(1) through (a)(41) and adding paragraphs (a)(42) through (a)(46). The revisions and additions read as follows:

§ 239.1 Notice to appear.

(a) * * *

(1) District directors (except foreign);
(2) Deputy district directors (except foreign);
(3) Chief patrol agents;
(4) Deputy chief patrol agents;
(5) Division chiefs;
(6) Assistant chief patrol agents;
(7) Patrol agents in charge;
(8) Deputy patrol agents in charge;
(9) Border patrol watch commanders;
(10) Special operations supervisors;
(11) Supervisory border patrol agents;
(12) Directors of air operations;
(13) Directors of marine operations;
(14) Supervisory air and marine interdiction agents;
(15) Service center directors;
(16) Deputy service center directors;
(17) Assistant service center directors for examinations;
(18) Supervisory immigration services officers;
(19) Supervisory immigration officers;
(20) Supervisory asylum officers;
(21) Officers in charge (except foreign);
(22) Assistant officers in charge (except foreign);
(23) Special agents in charge;
(24) Deputy special agents in charge;
(25) Associate special agents in charge;
(26) Assistant special agents in charge;
(27) Resident agents in charge;
(28) Supervisory special agents;
(29) Directors of investigations;
(30) District directors for interior enforcement;
(31) Deputy or assistant district directors for interior enforcement;
(32) Director of enforcement and removal operations;
(33) Field office directors;
(34) Deputy field office directors;
(35) Supervisory deportation officers;
(36) Supervisory detention and deportation officers;
(37) Directors or officers in charge of detention facilities;
(38) Directors of field operations;
(39) Assistant directors of field operations;
(40) Port directors;
(41) Assistant port directors;
(42) Field operations watch commanders;
(43) Field operations chiefs;
(44) Unit Chief, Law Enforcement Support Center;
(45) Section Chief, Law Enforcement Support Center; or
(46) Other duly authorized officers or employees of the Department of Homeland Security or of the United States who are delegated the authority as provided by 8 CFR 2.1 to issue notices to appear, and who have successfully completed any required immigration law enforcement training.

* * * * *

PART 240—GENERAL PROVISIONS

■ 7. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

§ 240.25 [Amended]

■ 8. Amend § 240.25 paragraph (a) by removing the words "Deputy Executive Associate Commissioner for Detention and Removal" and adding in their place "Deputy Executive Associate Director for Enforcement and Removal Operations".

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

■ 9. The authority citation for part 241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1228, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101, *et seq.*); 8 CFR part 2.

■ 10. Amend § 241.2:
■ a. By revising paragraph (a)(1); and
■ b. In paragraph (a)(2), by removing the reference to "(xxv)" and adding in its place "(xxxi)".

The revision reads as follows:

§ 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal*—(1) *In general.* A Form I–205, Warrant of Removal, based on the final administrative removal order in the alien's case will be issued by any of the following immigration officials:

(i) Director, Enforcement and Removal Operations;
(ii) Deputy Assistant Director, Field Operations;
(iii) Field Office Directors;
(iv) Deputy Field Office Directors;
(v) Assistant Field Office Directors;
(vi) Officers in Charge;
(vii) Special Agents in Charge;
(viii) Deputy Special Agents in Charge;
(ix) Associate Special Agents in Charge;
(x) Assistant Special Agents in Charge;
(xi) Group Supervisors;
(xii) Resident Agents in Charge;
(xiii) District Field Officers;
(xiv) Chief Patrol Agents;
(xv) Deputy Chief Patrol Agents;
(xvi) Division Chiefs;
(xvii) Assistant Chief Patrol Agents;
(xviii) Patrol Agents in Charge;
(xix) Deputy Patrol Agents in Charge;

(xx) Watch Commanders, Border Patrol;

(xxi) Director of Air Operations;

(xxii) Director of Marine Operations;

(xxiii) Supervisory Air and Marine Interdiction Agents;

(xxiv) Unit Chief, Law Enforcement Support Center;

(xxv) Section Chief, Law Enforcement Support Center;

(xxvi) Port Directors;

(xxvii) Assistant Port Directors;

(xxviii) Directors, Field Operations;

(xxix) Assistant Directors, Field Operations;

(xxx) Watch Commanders, Field Operations;

(xxxi) Chiefs, Field Operations; and

(xxxii) Other duly authorized officers or employees of the Department of Homeland Security or the United States who are delegated the authority as provided in 8 CFR 2.1 to issue Warrants of Removal, and who have successfully completed any required immigration law enforcement training.

* * * * *

PART 287—GENERAL PROVISIONS

■ 11. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Homeland Security Act of 2002, Pub. L. 107–296 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

■ 12. Amend § 287.5 by:

■ a. Revising paragraphs (b)(1) through (6);

■ b. Revising paragraphs (c)(1)(i) through (viii);

■ c. Revising paragraphs (c)(2)(i) through (viii);

■ d. Revising paragraphs (c)(3)(i) through (vii);

■ e. Revising paragraphs (c)(4)(ii)(A) through (G);

■ f. Revising paragraph (c)(4)(iii);

■ g. Revising paragraphs (c)(5)(ii)(A) through (G);

■ h. Revising paragraphs (d)(1) through (8);

■ i. Revising paragraphs (e)(1)(i) through (vi);

■ j. Adding paragraphs (e)(1)(vii) through (viii),

■ k. Revising paragraphs (e)(2)(i) through (l);

■ l. Adding paragraphs (e)(2)(li) through (liii);

■ m. Revising paragraphs (e)(3)(i) through (viii);

■ n. Revising paragraphs (e)(4)(i) through (vi);

■ o. Adding paragraphs (e)(4)(vii) through (viii); and

■ p. Revising paragraphs (f)(1) through (8).

The revisions and additions read as follows:

§ 287.5 Exercise of power by immigration officers.

* * * * *

(b) * * *

(1) Border patrol agents;

(2) Air and marine agents;

(3) Special agents;

(4) CBP officers;

(5) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(6) Immigration officers who need the authority to patrol the border under section 287(a)(3) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, or the Assistant Secretary/Director of ICE.

(c) * * *

(1) * * *

(i) Border patrol agents;

(ii) Air and marine agents;

(iii) Special agents;

(iv) Deportation officers;

(v) CBP officers;

(vi) Immigration enforcement agents;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to arrest aliens under section 287(a)(2) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of the USCIS.

(2) * * *

(i) Border patrol agents;

(ii) Air and marine agents;

(iii) Special agents;

(iv) Deportation officers;

(v) CBP officers;

(vi) Immigration enforcement agents;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to arrest persons under section 287(a)(4) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of the USCIS.

(3) * * *

(i) Border patrol agents;

(ii) Air and marine agents;

(iii) Special agents;

(iv) Deportation officers;

(v) CBP officers;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(5)(A) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, or the Assistant Secretary/Director of ICE.

(4) * * *

(ii) * * *

(A) Border patrol agents;

(B) Air and marine agents;

(C) Special agents;

(D) Deportation officers;

(E) CBP officers;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 287(a)(5)(B) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(iii) Notwithstanding the authorization and designation set forth in paragraph (c)(4)(ii) of this section, no immigration officer is authorized to make an arrest for any felony under the authority of section 287(a)(5)(B) of the Act until such time as he or she has been certified as successfully completing a training course encompassing such arrests and the standards for enforcement activities are defined in 8 CFR 287.8. Such certification will be valid for the duration of the immigration officer's continuous employment, unless it is suspended or revoked by the Commissioner of CBP or the Assistant Secretary/Director of ICE, or their respective designees, for just cause.

(5) * * *

(ii) * * *

(A) Border patrol agents;

(B) Air and marine agents;

(C) Special agents;

(D) Deportation officers;

(E) CBP officers;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 274(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

* * * * *

(d) * * *

(1) Border patrol agents;

(2) Air and marine agents;

(3) Special agents;

(4) Deportation officers;

(5) CBP officers;

(6) Immigration enforcement agents;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to conduct searches under section 287(c) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

(e) * * *

(1) * * *

(i) Border patrol agents;

(ii) Air and marine agents;

(iii) CBP officers;

(iv) Special agents;

(v) Deportation officers;

(vi) Immigration enforcement agents;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to execute search warrants under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(2) * * *

(i) District directors (except foreign);

(ii) Deputy district directors (except foreign);

(iii) Assistant district directors for investigations;

(iv) Deputy assistant district directors for investigations;

(v) Assistant district directors for deportation;

(vi) Deputy assistant district directors for deportation;

(vii) Assistant district directors for examinations;

(viii) Deputy assistant district directors for examinations;

(ix) Officers in charge (except foreign);

(x) Assistant officers in charge (except foreign);

(xi) Chief patrol agents;

(xii) Deputy chief patrol agents;

(xiii) Division chiefs;

(xiv) Assistant chief patrol agents;

(xv) Patrol agents in charge;

(xvi) Deputy patrol agents in charge;

(xvii) Border Patrol watch commanders;

(xviii) Special operations supervisors;

(xix) Supervisory border patrol agents;

(xx) Directors of air operations;

(xxi) Directors of marine operations;

(xxii) Supervisory air and marine interdiction agents;

(xxiii) Executive Associate Director of Homeland Security Investigations;

(xxiv) Institutional Hearing Program directors;

(xxv) Director, Field Operations;

(xxvi) Assistant Director, Field Operations;

(xxvii) Port directors;

(xxviii) Assistant port directors;

(xxix) Field operations watch commanders;

(xxx) Field operations chiefs;

(xxxi) Supervisory deportation officers;

(xxxii) Supervisory detention and deportation officers;

(xxxiii) Group Supervisors;

(xxxiv) Director, Office of Detention and Removal Operations;

(xxxv) Special Agents in Charge;

(xxxvi) Deputy Special Agents in Charge;

(xxxvii) Associate Special Agents in Charge;

(xxxviii) Assistant Special Agents in Charge;

(xxxix) Field Office Directors;

(xl) Deputy Field Office Directors;

(xli) District Field Officers;

(xlii) Supervisory immigration services officers;

(xliii) Supervisory immigration officers;

(xliv) Supervisory asylum officers;

(xlv) Supervisory special agents;

(xlvi) Director of investigations;

(xlvii) Directors or officers in charge of detention facilities;

(xlviii) Directors of field operations;

(xlix) Deputy or assistant directors of field operations;

(l) Unit Chief, Law Enforcement Support Center;

(li) Section Chief, Law Enforcement Support Center;

(lii) Immigration Enforcement Agents; or

(liii) Other duly authorized officers or employees of the Department of Homeland Security or the United States who are delegated the authority as provided in 8 CFR 2.1 to issue warrants of arrest, and who have successfully completed any required immigration law enforcement training.

(3) * * *

(i) Border patrol agents;

(ii) Air and marine agents;

(iii) Special agents;

(iv) Deportation officers;

(v) Detention enforcement officers or immigration enforcement agents (warrants of arrest for administrative immigration violations only);

(vi) CBP officers;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to execute arrest warrants for immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(4) * * *

(i) Border patrol agents;

(ii) Air and marine agents;

(iii) CBP officers

(iv) Special agents;

(v) Deportation officers;

(vi) Immigration enforcement agents;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to execute warrants of arrest for non-immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(f) * * *

(1) Border patrol agents;

(2) Air and marine agents;

(3) Special agents;

(4) Deportation officers;

(5) Detention enforcement officers or immigration enforcement agents;

(6) CBP officers;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to carry firearms under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

■ 13. Amend § 287.8 by:

■ a. Revising paragraphs (a)(1)(iv)(A) through (H);

■ b. Revising paragraphs (a)(2)(iii)(A) through (H);

■ c. Revising paragraph (c)(1);

■ d. Revising paragraphs (e)(2)(i) through (iii); and

■ e. Adding paragraphs (e)(2)(iv) through (v).

The revisions and additions read as follows:

§ 287.8 Standards for enforcement activities.

* * * * *

(a) * * *

(1) * * *

(iv) * * *

(A) Border patrol agents;

(B) Air and marine agents;

(C) Special agents;

(D) Deportation officers;

(E) Detention enforcement officers or immigration enforcement agents;

(F) CBP officers;

(G) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(H) Immigration officers who need the authority to use non-deadly force under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(2) * * *

(iii) * * *

(A) Border patrol agents;

(B) Air and marine agents;

(C) Special agents

(D) Deportation officers;

(E) Detention enforcement officers or immigration enforcement agents;

(F) CBP officers;

(G) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(H) Immigration officers who need the authority to use deadly force under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

* * * * *

(c) *Conduct of arrests*—(1) *Authority.* Only designated immigration officers are authorized to make an arrest. The list of designated immigration officers may vary depending on the type of arrest as listed in § 287.5(c)(1) through (c)(5).

* * * * *

(e) * * *

(2) * * *

(i) Border patrol agents;

(ii) Air and marine agents;

(iii) CBP officers;

(iv) Supervisory personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(v) Immigration officers who need the authority to initiate a vehicular pursuit in order to effectively accomplish their individual mission and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

* * * * *

Dated: August 30, 2016.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–21526 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 17

[Docket No. FDA–2016–N–1745]

Maximum Civil Money Penalty Amounts; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA or we) is amending its regulations to remove the maximum civil money penalties table associated with statutory provisions. This information will be included in the Department of Health and Human Services' (HHS) regulations. We are taking this action to comply with the Federal Civil Penalties Inflation Adjustment Act of 2015.

DATES: This rule is effective September 9, 2016.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4248, Silver Spring, MD 20993–0002, 301–796–4830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 3, 2014 (79 FR 6088), FDA issued a new regulation in 21 CFR 17.2 to adjust for inflation the maximum civil money penalty amounts for the various civil money penalty authorities within our jurisdiction and other matters.

FDA is amending 21 CFR 17.2 to remove the maximum civil money penalties table associated with statutory provisions authorizing civil money penalties under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) or the Public Health Service Act (PHS Act). The Federal Civil Penalties Inflation Adjustment Act of 2015 (Pub. L. 114–74, November 2, 2015) requires each Agency to adjust each civil money penalty provided by law within the jurisdiction of that Agency in one regulation. In accordance with this requirement, HHS is issuing a regulation that, in a consolidated table, adjusts the maximum civil money penalties associated with statutory provisions authorizing such penalties for all HHS Agencies. Because this consolidated table of these maximum civil money penalties, including those authorized under the FD&C Act and the PHS Act, can be found at 45 CFR 102.3, we are including a cross-reference to 45 CFR 102.3 in our regulations. We are taking this action to comply with the Federal Civil Penalties Inflation Adjustment Act of 2015.

Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comments are unnecessary because the amendments to the regulations provide only technical changes to remove and update information and are nonsubstantive.

List of Subjects in 21 CFR Part 17

Administrative practice and procedure, Penalties.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 17 is amended as follows:

PART 17—CIVIL MONEY PENALTIES HEARINGS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371; 42 U.S.C. 262, 263b, 300aa–28; 5 U.S.C. 554, 555, 556, 557.

■ 2. Revise § 17.2 to read as follows:

§ 17.2 Maximum penalty amounts.

The maximum civil money penalties associated with the statutory provisions authorizing civil money penalties under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act can be found at 45 CFR part 102. The table of these maximum civil money penalties can be found at 45 CFR 102.3.

Dated: July 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21705 Filed 9–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9783]

RIN 1545–BJ55

Modifications to Minimum Present Value Requirements for Partial Annuity Distribution Options Under Defined Benefit Pension Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These regulations change the regulations regarding the minimum present value requirements for defined benefit plan distributions to permit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a single sum or other more accelerated form. These regulations affect participants, beneficiaries, sponsors, and administrators of defined benefit pension plans.

DATES:

Effective date: These regulations are effective on September 9, 2016.

Applicability date: These regulations apply to distributions with annuity starting dates in plan years beginning on or after on or after January 1, 2017. In addition, a taxpayer can elect to apply these regulations with respect to any earlier period.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu or Linda S. F. Marshall at (202) 317–6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 417(e) of the Internal Revenue Code (Code). These final regulations amend § 1.417(e)–1 of the Treasury regulations.

Section 401(a)(11) of the Code provides that, in order for a defined benefit plan to qualify under section 401(a), and except as provided under section 417, in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant must be provided in the form of a qualified joint and survivor annuity (QJSA), as defined in section 417(b).

Section 417(e)(1) provides that a plan may provide that the present value of a QJSA or a qualified preretirement survivor annuity (QPSA), as defined in 417(c), will be immediately distributed if that present value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). Section 417(e)(2) provides that, if the present value of the QJSA or QPSA exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), then a plan may immediately distribute the present value of that annuity only if the participant and the spouse of the participant (or if the participant has died, the surviving spouse) consent in writing to the distribution.

Section 417(e)(3)(A) provides that the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.[1] Section 417(e)(3)(B) and (C) define the terms "applicable mortality table" and "applicable interest rate," respectively.

Section 411(a)(13) of the Code, as added by section 701(b) of PPA '06, provides that an "applicable defined benefit plan," as defined by section 411(a)(13)(C), is not treated as failing to meet the requirements of section 417(e) with respect to accrued benefits derived from employer contributions solely because the present value of a participant's accrued benefit (or any portion thereof) may be, under the terms of the plan, equal to the amount expressed as the hypothetical account balance or as an accumulated percentage of such participant's final average compensation.

Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. However, the last sentence of section 411(d)(6)(B) provides that the Secretary may by regulations provide that section 411(d)(6)(B) does not apply to a plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Final regulations under section 417 relating to the QJSA and QPSA requirements were issued on August 22, 1988. The final regulations were amended on April 3, 1998, to reflect changes enacted by the Uruguay Round Agreements Act, Public Law 103–465 (108 Stat. 4809 (1994)).

Section 1.417(e)–1(d)(1) provides that a defined benefit plan generally must provide that the present value of any accrued benefit and the amount of any distribution, including a single sum, must not be less than the amount calculated using the specified applicable interest rate and the specified applicable mortality table. The present value of any optional form of benefit cannot be less than the present value of the accrued benefit determined in accordance with the preceding sentence.

Section 1.417(e)–1(d)(6) provides an exception from the minimum present value requirements of section 417(e) and § 1.417(e)–1(d). This exception applies to the amount of a distribution paid in the form of an annual benefit that either does not decrease during the life of the participant (or, in the case of a QPSA, the life of the participant's spouse), or that decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of such survivor annuitant) or the cessation or reduction of Social Security supplements or qualified disability benefits.

Sections 204(g) and 205(g) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA), contain rules that are parallel to Code sections 411(d)(6) and 417(e), respectively. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these regulations apply for purposes of the Code and the corresponding provisions of ERISA.

In the case of a defined benefit plan that offers a single-sum distribution or other form of accelerated distribution as an optional form of benefit in addition to the required QJSA, many participants have been reluctant to elect lifetime payments to insure against unexpected longevity, choosing instead an accelerated distribution form in order to maximize their liquidity. However, participants who elect a single sum or other accelerated form of distribution may face greater challenges in protecting against the risk of outliving their retirement savings. The Treasury Department and the IRS believe that many participants are better served by having the opportunity to elect to receive a portion of their retirement benefits in annuity form (which provides financial protection against unexpected longevity) while receiving accelerated payments for the remainder of their benefits to provide increased liquidity during retirement.

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[1] Under section 411(a)(11)(B), the same applicable mortality table and applicable interest rate are used for purposes of determining whether the present value of a participant's nonforfeitable accrued benefit exceeds the maximum amount that can be immediately distributed without the participant's consent.

In order to permit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form, the IRS issued proposed regulations under section 417(e)(3) (77 FR 5454) on February 3, 2012, that would have modified existing final regulations regarding the minimum present value requirements for defined benefit plan distributions. A number of comments were received on the proposed regulations, and a public hearing was held on June 1, 2012. After consideration of the comments received, the Treasury Department and the IRS are issuing these final regulations to adopt the rules set forth in the proposed regulations with modifications in response to the comments received.

Explanation of Provisions

Treatment of Bifurcated Accrued Benefits

In order to facilitate the payment of benefits partly in the form of an annuity and partly as a single sum (or other accelerated form), this document amends the regulations under section 417(e) to permit plans to simplify the treatment of certain optional forms of benefit that are paid to a participant partly in the form of an annuity that is excepted from the minimum present value requirements of section 417(e)(3) pursuant to § 1.417(e)–1(d)(6) and partly in a more accelerated form. Like the proposed regulations, these final regulations provide rules under which the participant's accrued benefit can be bifurcated so that the minimum present value requirements of section 417(e)(3) and § 1.417(e)–1(d) apply to only the portion of the participant's accrued benefit that is paid in an accelerated form.

The proposed regulations would have provided for three different approaches to bifurcating the accrued benefit so that the minimum present value requirements apply to only a portion of the accrued benefit. Under the first approach in the proposed regulations, a plan could have provided for two separate portions of the accrued benefit that were determined without regard to any election of optional form of benefit and permitted a participant to select different distribution options with respect to each of those portions of the accrued benefit. Under the second approach, a plan could have provided for proportionate benefits with respect to each distribution option equal to the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire accrued benefit. Finally, under the third approach, a plan could have provided for a specified amount to be distributed as a single sum, but only if the plan satisfied a minimum benefit requirement with respect to the distribution that was not paid in a single sum.

Commenters generally supported the adoption of the rules in the proposed regulations, but raised several specific issues. Several commenters stated that it was sometimes difficult to determine which approach for bifurcating the accrued benefit applied to a particular plan design. These commenters suggested that certain plan designs appeared to fit within more than one approach, while other plan designs that were consistent with the intent of the proposed regulations did not seem to fit within any approach. In response to comments received, the rules providing for the bifurcation of the accrued benefit have been simplified and clarified in these final regulations.

The final regulations combine the first two bifurcation approaches from the proposed regulations into a single, more broadly applicable rule. Under the rule in these final regulations, a plan is permitted to explicitly bifurcate the accrued benefit so that the plan provides that the requirements of § 1.417(e)–1(d) apply to a specified portion of a participant's accrued benefit as if that portion were the participant's entire accrued benefit. This rule does not impose any requirements with respect to the distribution options for the remaining portion of the accrued benefit.

An alternative rule is provided in the final regulations under which a plan that distributes a specified single-sum amount to a participant satisfies the requirements of § 1.417(e)-1(d) with respect to that payment, provided the remaining portion of the participant's accrued benefit satisfies a minimum requirement. This rule is essentially the same as the third bifurcation approach from the proposed regulations. Under this alternative rule, the portion of the participant's accrued benefit, expressed in the normal form of benefit under the plan and commencing at normal retirement age (or at the current date, if later), that is not settled by the single-sum payment must be no less than the excess of: (1) The participant's total accrued benefit expressed in that form; over (2) the annuity payable in that form that is actuarially equivalent to the single-sum payment, determined using the applicable interest rate and the applicable mortality table. Thus, the portion of the participant's accrued benefit that is settled by the payment of a specified single-sum amount is implicitly determined as the actuarial equivalent of that single-sum amount.

The regulations provide a number of rules of operation that apply to one or both of the rules for bifurcating the accrued benefit. In particular, the regulations provide that if a participant selects different distribution options with respect to two separate portions of the participant's accrued benefit that were determined under the rules in these regulations, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and § 1.417(e)–1(d), even if the distribution options have the same annuity starting date. Thus, if one of those separate optional forms of benefit is exempt from the requirement to use the section 417(e)(3) assumptions, the plan is required to apply the section 417(e)(3) assumptions only to the other optional form of benefit. This would permit a plan to use its usual annuity equivalence factors for the annuity portion (rather than being required to make a special calculation of the annuity portion using the section 417(e)(3) assumptions). The approach set forth in these regulations is simpler than applying the section 417(e)(3) assumptions to the entire optional form of benefit, and yields an intuitive result that is consistent with plan sponsor and participant expectations.

The regulations provide that explicit bifurcation must be used in specified cases. One such case is the situation in which a plan has been amended to eliminate an optional form of benefit (but, in accordance with section 411(d)(6), retains the optional form of benefit with respect to benefits accrued as of the applicable amendment date). Commenters indicated that it was unclear which bifurcation approach would apply to this situation under the proposed regulations. In response to these comments, the final regulations specify that if the amount of a distribution in an optional form of benefit to which § 1.417(e)–1(d) applies is determined by reference to the portion of a participant's accrued benefit as of the applicable amendment date, then the plan is not permitted to use the alternative rule under which the amount of the benefit that is settled by the single-sum payment is implicitly determined but could use the explicit bifurcation rule in order to avoid application of section 417(e) to both optional forms of benefit. The implicit bifurcation rule also is not available in a situation in which a single-sum distribution is available to settle a participant's entire accrued benefit and the plan permits a portion of the benefit to be paid as a lump sum.

Under the regulations, if a plan provides for an early retirement benefit, a retirement-type subsidy, an optional form of benefit, or an ancillary benefit, that applies only to a portion of a participant's accrued benefit, and the plan provides for an accelerated form of distribution that settles some, but not all, of the participant's accrued benefit, then the plan must specify which portion of the participant's total accrued benefit is settled by that distribution. This is necessary in order to determine the extent to which the early retirement benefit, retirement-type subsidy, optional form of benefit, or ancillary benefit applies with respect to the remaining portion of the accrued benefit. For example, if a plan had one set of early retirement factors that applied to the accrued benefit as of December 31, 2005, but a different set of early retirement factors that applied to benefit accruals earned after that date, and the plan provides for a single-sum distribution that settles only a portion of a participant's accrued benefit, then the plan must specify which portion of the accrued benefit is settled by that distribution (in order to determine which early retirement factors apply to the remaining portion of the accrued benefit).

The regulations provide for limited section 411(d)(6) relief in the case of a plan that, for plan years beginning before January 1, 2017, uses the section 417(e)(3) applicable interest rate and applicable mortality table to calculate the amount of a distribution that is made to settle a portion of the accrued benefit if, pursuant to these final regulations, the requirements of section 417(e)(3) need not apply to the distribution. In such a case, section 411(d)(6) is not violated solely because, in accordance with these final regulations, the plan is amended on or before December 31, 2017, to provide that the amount of the distribution described in the preceding sentence to which the requirements of section 417(e)(3) need not apply is determined for an annuity starting date on or after the applicable amendment date (within the meaning of § 1.411(d)–3(g)(4)) using the same actuarial assumptions that would apply to calculate the amount of a distribution in that same form of benefit if the participant elected to receive the entire accrued benefit in that form.

The final regulations include a number of examples in order to illustrate the bifurcation rules of the regulations and the rules of operation with respect to these rules.

Effective/Applicability Date

These regulations are effective on September 9, 2016.

The changes under these regulations apply to distributions with annuity starting dates in plan years beginning on or after January 1, 2017. However, taxpayers may apply these rules to earlier periods.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Neil S. Sandhu and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.417(e)–1 is amended by:

■ 1. Redesignating paragraph (d)(1) as paragraph (d)(1)(i) and revising the heading of the newly redesignated paragraph (d)(1)(i).

■ 2. Adding a heading for paragraph (d)(1).

■ 3. In the first sentence of newly redesignated paragraph (d)(1)(i), removing "A defined benefit plan" and adding "Except as provided in section 411(a)(13) and the regulations thereunder, a defined benefit plan" in its place.

■ 4. Adding paragraph (d)(1)(ii).

■ 5. Revising paragraph (d)(7), the heading for paragraph (d)(8), and paragraph (d)(8)(i).

■ 6. Adding paragraph (d)(8)(v).

The additions and revisions read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(d) *Present value requirement*—(1) *General rule*—(i) *Defined benefit plans.* * * *

(ii) *Defined contribution plans.* Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), regardless of whether the requirements of section 401(a)(11) apply to the plan.

* * * * *

(7) *Application to portion of a participant's benefit*—(i) *In general.* This paragraph (d)(7) provides rules under which the requirements of this paragraph (d) apply to the distribution of only a portion of a participant's accrued benefit. Paragraph (d)(7)(ii) of this section provides rules for how a participant's accrued benefit may be bifurcated into separate components for purposes of applying this paragraph (d). Paragraph (d)(7)(iii) of this section provides rules of application. Paragraph (d)(7)(iv) of this section provides certain limited section 411(d)(6) relief, and paragraph (d)(7)(v) of this section provides examples of the application of the rules of this paragraph (d)(7).

(ii) *Bifurcation of accrued benefit*—(A) *Explicit plan-specified bifurcation.* A plan is permitted to provide that the requirements of this paragraph (d) apply to a specified portion of a participant's accrued benefit as if that portion were the participant's entire accrued benefit. For example, a plan is permitted to provide that a distribution in the form of a single-sum payment described in this paragraph (d)(7)(ii)(A) is made to settle a specified percentage of the participant's accrued benefit. As another example, a plan is permitted to provide that a distribution in the form of a single-sum payment described in this paragraph (d)(7)(ii)(A) is made to settle the accrued benefit derived from contributions made by an employee. In both examples, the distribution must satisfy the requirements of this paragraph (d) with respect to the specified portion of the accrued benefit, and the remaining portion of the accrued benefit (the participant's total accrued benefit less the portion of the accrued benefit settled by the single-sum payment) can be paid in some other form of distribution that is available under the plan.

(B) *Distribution of specified amount.* A plan that provides for a distribution of a single-sum payment that is not described in paragraph (d)(7)(ii)(A) of this section satisfies the requirements of this paragraph (d) with respect to that distribution if the portion of the participant's accrued benefit, expressed in the normal form of benefit under the plan and commencing at normal retirement age (or at the current date, if later), that is not settled by the distribution is no less than the excess of—

(*1*) The participant's total accrued benefit expressed in that form; over

(*2*) The annuity payable in that form that is actuarially equivalent to the single-sum payment, determined using the applicable interest rate and the applicable mortality table.

(iii) *Rules of operation*—(A) *Multiple distribution options.* If a participant selects different distribution options with respect to two separate portions of the participant's accrued benefit that were determined in accordance with paragraph (d)(7)(ii) of this section, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and this paragraph (d), even if the distribution options have the same annuity starting date. Thus, if the exception from the requirements of section 417(e)(3) and this paragraph (d) that is contained in paragraph (d)(6) of this section applies to one of those optional forms of benefit, then this paragraph (d) applies only to the other optional form of benefit.

(B) *Repeated application of rule.* If a participant's accrued benefit has been bifurcated in accordance with paragraph (d)(7)(ii) of this section, then the provisions of paragraph (d)(7)(ii) of this section may be applied again to bifurcate the remaining accrued benefit.

(C) *Requirement to use explicit plan-specified bifurcation in certain cases*—(*1*) *Section 411(d)(6)—protected optional form.* If the amount of a distribution in an optional form of benefit to which this paragraph (d) applies is determined by reference to the portion of a participant's accrued benefit as of the applicable amendment date for an amendment that eliminates that optional form of benefit (but, in accordance with section 411(d)(6), retains the optional form of benefit with respect to benefits accrued as of the applicable amendment date), then the plan must provide for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section.

(*2*) *Single-sum available with respect to entire accrued benefit.* If a plan provides that a single-sum distribution is available to settle a participant's entire accrued benefit, then, in order to also provide for a distribution in the form of a single-sum payment that settles only a portion of a participant's accrued benefit, the plan must provide for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section.

(D) *Application of different factors to different portions of the accrued benefit.* If a plan provides for an early retirement benefit, a retirement-type subsidy, an optional form of benefit, or an ancillary benefit, that applies only to a portion of a participant's accrued benefit, and the plan provides for a distribution that settles some, but not all, of the participant's accrued benefit, then the plan must specify which portion of the participant's total accrued benefit is settled by that distribution. For example, if a plan had one set of early retirement factors that applied to the accrued benefit as of December 31, 2005, but a different set of early retirement factors that applied to benefit accruals earned after that date, and the plan provides for a single-sum distribution that settles only a portion of a participant's accrued benefit, then the plan must specify which portion of the accrued benefit is settled by that distribution (in order to determine which early retirement factors apply to the remaining portion of the accrued benefit).

(iv) *Limited section 411(d)(6) anti-cutback relief.* This paragraph (d)(7)(iv) applies in the case of a plan that, for plan years beginning before January 1, 2017, uses the section 417(e)(3) applicable interest rate and applicable mortality table to calculate the amount of a distribution that is made to settle a portion of the accrued benefit if, pursuant to this paragraph (d)(7), the requirements of section 417(e)(3) and this paragraph (d) need not apply to the distribution. In such a case, section 411(d)(6) is not violated merely because, in accordance with this paragraph (d)(7), the plan is amended on or before December 31, 2017, to provide that the amount of a distribution described in the preceding sentence is determined for an annuity starting date on or after the applicable amendment date (within the meaning of § 1.411(d)–3(g)(4)) using the same actuarial assumptions that apply to calculate the amount of a distribution in the same form of benefit that is made to settle the participant's entire accrued benefit.

(v) *Examples.* The following examples illustrate the rules of this paragraph (d)(7). Unless otherwise indicated, these examples are based on the following assumptions: The taxpayers elect to apply the rules of this paragraph (d)(7) in 2016; each plan is a noncontributory defined benefit plan with a calendar-year plan year and a normal retirement age of age 65; a one-year stability period coinciding with the calendar year and a two-month lookback are used for determining the applicable interest rate; and all participant elections are made with proper spousal consent. The November 2015 segment rates are 1.76%, 4.15% and 5.13%.

Example 1. (i) Plan A offers a number of optional forms of payment, including a qualified joint and survivor annuity and a single-sum payment. The single-sum payment is equal to the present value of the participant's immediate benefit (but not less than the present value of the participant's accrued benefit payable at normal retirement age) using the applicable interest and mortality rates under section 417(e)(3). The amount of the joint and survivor annuity is determined using plan factors that are not based on the applicable interest and mortality rates under section 417(e)(3). Plan A permits a participant to elect to receive a percentage of the accrued benefit as a single sum and the remainder in any annuity form provided under the plan, with the amount of the single-sum payment determined by multiplying the amount that would be payable if the entire benefit were paid as a single sum by the percentage of the accrued benefit settled by the single-sum payment.

(ii) Participant S retires at age 62 in 2016, with an accrued benefit of $1,000 per month payable as a straight life annuity at normal retirement age. Participant S is eligible for an unreduced early retirement benefit and can therefore collect a straight life annuity benefit of $1,000 per month beginning immediately. Alternatively, Participant S can elect to receive the benefit in other forms, including a single-sum payment of $168,516 (based on the applicable interest and mortality rates under section 417(e), which are the November 2015 segment rates and the 2016 applicable mortality table), or a 100% joint and survivor annuity of $850 per month (based on the plan's actuarial equivalence factors). Participant S elects to receive 25% of the accrued benefit in the form of a single-sum payment and the remaining 75% of the accrued benefit as a 100% joint and survivor annuity.

(iii) Participant S receives a single-sum payment with respect to 25% of the accrued benefit. Accordingly, this single-sum payment is equal to 25% of the full single-sum amount, or $42,129. The remaining portion of the accrued benefit is 75% of the total accrued benefit, or $750 per month payable as a straight life annuity at normal retirement age.

(iv) To settle the remaining portion of the accrued benefit, in addition to the single-sum payment of $42,129, Participant S receives a 100% joint and survivor annuity in the amount of $637.50 per month, which is determined by applying the plan's unreduced early retirement and actuarial equivalence factors to the remaining portion of the accrued benefit of $750 per month payable as a straight life annuity at normal retirement age. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 2. (i) Plan B is a contributory defined benefit plan that permits a participant to elect a single sum distribution equal to the participant's employee contributions, accumulated with interest, with the remainder payable as an annuity. Plan B provides that the probability of death before normal retirement age is not taken into account for purposes of determining actuarial equivalence between the single-sum payment and an annuity at normal retirement age. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the deferred annuity factor at age 60 for lifetime payments commencing at age 65 (determined without taking mortality before age 65 into account) is 10.209.

(ii) Participant T retires at age 60 in 2016 with an accrued benefit of $1,500 per month payable as a straight life annuity commencing at normal retirement age. For benefits commencing at age 60, Plan B provides for an early retirement reduction factor of 75% and an actuarial equivalence factor of 98% for adjusting a straight life annuity to a 10-year certain and life annuity, neither of which is based on the applicable interest and mortality rates under section 417(e)(3). Participant T's benefit commencing at age 60 in the form of a 10-year certain and life annuity would be $1,500 × 75% × 98% = $1,102.50 per month. Participant T elects to receive a single sum payment of $32,000 equal to T's accumulated contributions with interest, and the remainder as a 10-year certain and life annuity.

(iii) The single-sum payment elected by Participant T is a distribution that is determined by reference to Participant T's contributions and interest, and not by reference to a specified portion of the participant's accrued benefit. Therefore, the single-sum payment is not described in paragraph (d)(7)(ii)(A) of this section. In order to satisfy paragraph (d)(7)(ii)(B) of this section, the portion of the participant's accrued benefit that is not settled by the single-sum payment must be no less than the excess of (A) the participant's total accrued benefit over (B) the annuity that is actuarially equivalent to the single-sum payment, (determined using the applicable interest and mortality rates under section 417(e)(3) as applicable), both expressed in the normal form of benefit commencing at normal retirement age. The amount of that actuarially equivalent annuity is determined by dividing Participant T's single-sum payment of $32,000 by the deferred annuity factor for lifetime payments commencing at age 65 under the terms of Plan B (10.209, not considering mortality for the deferral period) and dividing by 12 for an actuarially equivalent monthly benefit commencing at age 65 of $261.21. Thus, in order to satisfy paragraph (d)(7)(ii)(B) of this section, the remaining portion of T's accrued benefit must be at least $1,238.79 per month ($1,500.00 − $261.21) payable as a straight life annuity at normal retirement age.

(iv) Based on Plan B's early retirement and optional form factors applied to the remaining portion, the annuity benefit payable to Participant T in the form of a 10-year certain and life annuity beginning at age 60 cannot be less than $910.51 per month ($1,238.79 × 75% × 98%). Participant T receives this in addition to the single-sum payment of $32,000. The 10-year certain and life benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

(v) If, instead, Plan B's terms had provided for a single-sum payment equal to the present value of the participant's employee-provided accrued benefit as determined under section 411(c)(3), then the plan is determining the single-sum payment as the present value of a specified portion of the accrued benefit. In such a case, the plan is using explicit bifurcation as described in paragraph (d)(7)(ii)(A) of this section and the single-sum payment would have to be set equal to the present value, determined under Plan B's terms, of T's employee-provided accrued benefit (which may or may not be equal to T's accumulated contributions and interest, depending on the plan's terms). The remaining annuity benefit payable to Participant T would have been based on an accrued benefit equal to $1,500 per month minus the amount of T's employee-provided accrued benefit.

Example 3. (i) The facts are the same as in *Example 2* of this paragraph (d)(7)(v), except that Plan B also offers a single-sum payment option with respect to a participant's entire benefit. The single-sum payment is determined as the present value of the participant's early retirement benefit (but no less than the present value of the participant's accrued benefit) using the applicable interest and mortality rates under section 417(e)(3). Based on the applicable mortality table for 2016 and the November 2015 segment rates, the immediate annuity factor for lifetime payments commencing at age 60 is 14.632. Under the terms of the plan, the early retirement benefit payable as a straight life annuity to Participant T at age 60 with respect to T's full accrued benefit is $1,125 ($1,500 × 75%), and the corresponding single-sum amount payable to T is $1,125 × 14.632 × 12 = $197,532. (Note that this amount is larger than the age-60 present value of T's accrued benefit without taking mortality before age 65 into account, $1,500 × 10.209 × 12 = $183,762.) Participant T elects to receive a partial single-sum payment of $32,000, equal to T's accumulated contributions with interest and to take the remaining accrued benefit in the form of a 10-year certain and life annuity commencing at age 60.

(ii) Because the plan also provides for a single-sum payment option with respect to a participant's entire benefit, pursuant to paragraph (d)(7)(iii)(C)(*2*) of this section the partial single-sum payment must be determined pursuant to the explicit bifurcation rules of paragraph (d)(7)(ii)(A) of this section.

(iii) The portion of the participant's accrued benefit that is settled by the single-sum payment of $32,000 is determined as the amount that bears the same ratio to the total accrued benefit as that single-sum payment bears to the single-sum payment with respect to the entire accrued benefit (($32,000 ÷ $197,532) × $1,500), which is $243 per month payable as a straight life annuity at normal retirement age. Thus, the remaining portion of the accrued benefit is $1,257.00 per month payable as a straight life annuity at normal retirement age.

(iv) Based on Plan B's early retirement and optional form factors applied to the remaining portion, the annuity benefit payable to Participant T in the form of a 10-year certain and life annuity beginning at age 60 is $923.90 per month ($1,257 × 75% × 98%). Participant T receives this benefit in addition to the single sum payment of $32,000. The 10-year certain and life benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 4. (i) Plan C was amended to freeze benefits under a traditional defined benefit formula as of December 31, 2016, and to provide benefits under a cash balance formula beginning January 1, 2017. The plan provides that participants may elect separate distribution options for the portion of the benefit accrued under the traditional formula as of December 31, 2016, and the portion of the benefit earned under the cash balance formula. Furthermore, the plan provides that a participant may elect to receive a single-sum payment only with respect to the portion of the benefit earned under the cash balance formula.

(ii) In accordance with paragraph (d)(7)(ii)(A) of this section, Plan C provides for an explicitly bifurcated accrued benefit because the portion of the accrued benefit settled by a distribution is determined separately for the portion under the traditional formula and the portion under the cash balance formula. As provided under paragraph (d)(7)(iii)(A) of this section, a single-sum payment under the cash balance formula and a distribution option under the traditional formula are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Therefore, whether a participant elects to receive a single-sum payment of the portion of the benefit earned under the cash balance formula does not affect whether the distribution elected with respect to the portion of the benefit earned as of December 31, 2016, is subject to the minimum present value requirements of section 417(e)(3).

Example 5. (i) The facts are the same as in *Example 4* of this paragraph (d)(7)(v), except that Plan C also permits a participant to elect, with respect to the cash balance portion of the benefit, to receive a percentage of that portion as a single sum and the remainder in any annuity form provided under the plan, with the amount of the single-sum payment determined by multiplying the amount that would be payable if the entire cash balance portion were paid as a single sum by the percentage of the cash balance portion settled by the single-sum payment. Participant W retires at age 65, with an accrued benefit under the traditional defined benefit formula (earned as of December 31, 2016) of $500 per month payable as a straight life annuity at normal retirement age and a cash balance hypothetical account balance of $45,000. Based on Plan C's actuarial equivalence factors, Participant W's accrued benefit derived from the cash balance hypothetical account is $320 per month, payable as a straight life annuity at normal retirement age. Participant W elects to receive ⅓ or $15,000 of the current hypothetical account balance in the form of a single sum and to receive the remainder of the total accrued benefit as a straight life annuity.

(ii) Under the analysis set forth in *Example 4* of this paragraph (d)(7)(v), Plan C provides for an explicitly bifurcated accrued benefit with respect to the traditional defined benefit portion and the cash balance portion because the portion of the accrued benefit settled by a distribution is determined separately for the portion under the traditional formula and the portion under the cash balance formula. As provided under paragraph (d)(7)(iii)(A) of this section, a single-sum payment under the cash balance formula and a distribution option under the traditional formula are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Thus, a separate distribution option may be chosen for each of these two portions, and section 417(e)(3) applies separately to each portion.

(iii) In accordance with paragraph (d)(7)(ii)(A) of this section, Plan C also provides for an explicitly bifurcated accrued benefit with respect to the cash balance benefit because the plan provides that a distribution in the form of a single-sum payment is made to settle a specified percentage of the cash balance benefit. As provided under paragraph (d)(7)(iii)(A) of this section, the single-sum payment and the annuity selected by Participant W with respect to the cash balance benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Thus, in accordance with paragraph (d)(7)(ii)(A) of this section, ⅓ of the cash balance hypothetical account is settled by the distribution paid out as a single sum (that is, $15,000 ÷ $45,000). After the single-sum payment, the remaining portion of the accrued benefit derived from the cash balance account is ⅔ of the initial accrued benefit derived from the cash balance account, or a straight life annuity at normal retirement age of $213.33 per month (⅔ × $320).

(iv) To settle the remaining portion of the entire accrued benefit (the portion of the benefit attributable to service as of December 31, 2016 plus the remaining portion of the cash balance benefit), Participant W receives a monthly life annuity of $713.33 per month payable as a straight life annuity at normal retirement age (equal to the $500 straight life annuity at normal retirement age earned as of December 31, 2016 plus the remaining benefit derived from the cash balance portion of a straight life annuity payable at normal retirement age of $213.33 per month). Participant W's election to receive a single-sum payment of part of the benefit earned under the cash balance formula does not affect whether the remainder of Participant W's distribution is subject to the minimum present value requirements of section 417(e)(3).

Example 6. (i) Plan D permits participants to elect a single-sum payment of up to $10,000 with the remaining benefit payable in the form of an annuity. Participant X retires in 2016 at age 55 with an accrued benefit of $1,000 per month payable as a straight life annuity at normal retirement age. Participant X is eligible for an unreduced early retirement benefit of $1,000 per month payable as a straight life annuity. Alternatively, based on Plan D's definition of actuarial equivalence (which is not based on the applicable interest and mortality rates under section 417(e)(3)), Participant X can receive an immediate benefit in the form of a 100% joint and survivor annuity of $800 per month. Participant X elects to receive a single-sum payment of $10,000, with the balance of the benefit payable as a 100% joint and survivor annuity beginning at age 55. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the deferred annuity factor at age 55 for lifetime payments commencing at age 65 is 7.602.

(ii) Plan D provides for a single-sum distribution of a portion of the participant's accrued benefit but, because the plan initially specifies the amount of the single-sum distribution (rather than the portion of the accrued benefit that is being settled by that distribution), Plan D is described in paragraph (d)(7)(ii)(B) of this section. As provided under paragraph (d)(7)(iii)(A) of this section, the single-sum payment and the joint-and-survivor annuity selected by Participant X are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d).

(iii) A straight life annuity of $109.62 per month payable at normal retirement age is actuarially equivalent to the $10,000 single-sum payment, determined using the applicable mortality table for 2016 and the November 2015 segment rates ($10,000 ÷ 12 ÷ 7.602). Therefore, pursuant to paragraph (d)(7)(ii)(B) of this section, in order to satisfy this paragraph (d) the remaining portion of the accrued benefit after the single-sum payment of $10,000 must be no less than $890.38 per month payable as a straight life annuity at normal retirement age ($1,000.00 − $109.62).

(iv) Based on Plan D's early retirement and optional form factors, in order to satisfy this paragraph (d), the annuity benefit payable to Participant X in the form of a 100% joint-and-survivor annuity beginning at age 55 must be no less than $712.30 per month ($890.38 × .8). Participant X receives this benefit in addition to the single sum payment of $10,000. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 7. (i) Plan E provides for an unreduced early retirement benefit for participants who have met certain age and service requirements. Prior to amendment, Plan E permitted participants to elect a single-sum payment equal to the present value of the participant's unreduced early retirement benefit, determined using the applicable interest rate and applicable mortality table under section 417(e)(3). Plan E did not permit participants to elect a single-sum payment with respect to only a portion of their benefits. Effective December 31, 2012, Plan E was amended to eliminate the single-sum payment with respect to benefits accrued after that date.

(ii) Participant Y retires on December 31, 2016, at age 60, after meeting Plan E's age and service requirements for an unreduced early retirement benefit. Participant Y's accrued benefit is $1,000 per month payable as a straight life annuity commencing at normal retirement age, of which $800 per month was accrued as of December 31, 2012. Participant Y elects to take a single-sum payment based on the benefit accrued as of December 31, 2012, with the remainder paid as a lifetime annuity commencing at age 60. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the immediate annuity factor for lifetime payments commencing at age 60 is 14.632, so Y's single-sum payment is $800 × 12 × 14.632 = $140,467.20.

(iii) In accordance with paragraph (d)(7)(iii)(C)(*1*) of this section, Plan E provides for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section. Therefore, Participant Y must receive an annuity of $200 earned after December 31, 2012 in addition to the single-sum payment of $140,467. Plan E is not permitted to use the approach described in paragraph (d)(7)(ii)(B) of this section to reduce or eliminate the $200 annuity earned after December 31, 2012.

(8) *Effective/applicability date*—(i) *In general.* Except as otherwise provided in this paragraph (d)(8), this paragraph (d) applies to distributions with annuity

starting dates in plan years beginning on or after January 1, 1995.

* * * * *

(v) *Effective date for special rules applicable to the payment of a portion of a participant's benefit.* Paragraph (d)(7) of this section applies to distributions with annuity starting dates in plan years beginning on or after January 1, 2017. However, taxpayers may elect to apply the rules of paragraph (d)(7) of this section to earlier periods.

* * * * *

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: August 3, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–21393 Filed 9–8–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0829]

RIN 1625–AA08

Special Local Regulation; Louisville Dragon Boat Festival, Ohio River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Louisville Dragon Boat Festival on the Ohio River, from mile marker 603.0 and ending at 603.5. This rule is effective from 3 p.m. to 7:30 p.m. on September 9, 2016 and from 7 a.m. to 4:00 p.m. on September 10, 2016. During the enforcement period, no vessel may transit this regulated area unless registered with the sponsor as a participant or an official patrol vessel, or unless specifically authorized by the Captain of the Port Ohio Valley.

DATES: The regulations in 33 CFR 100.801, Table No. 1, Line no. 12 will be enforced for the Louisville Dragon Boat Festival as identified in the **SUPPLEMENTARY INFORMATION** section below with dates and times.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email James Robinson, Sector Ohio Valley, U.S. Coast Guard at telephone 502–779–5347, email *James.C.Robinson@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a special local regulation for the Louisville Dragon Boat Festival listed in 33 CFR 100.801, Table no. 1, Line no. 12, from 7 a.m. to 5:30 p.m. on September 9, 2016 and from 7 a.m. to 5:30 p.m. on September 10, 2016. This action is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with the Louisville Dragon Boat Festival. These regulations can be found in the Code of Federal Regulations, under 33 CFR 100.801. During the enforcement period no vessel may transit this regulated area unless registered with the sponsor as a participant or official patrol vessel, or unless authorized by the Captain of the Port (COTP). If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR part 100 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide the maritime community with advanced notification of this enforcement period via Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNM). If the COTP Ohio Valley determines that the special local regulation need not be enforced for the full duration, a BNM to grant general permission to enter the regulated area may be used.

Dated: September 6, 2016.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–21743 Filed 9–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0718]

Special Local Regulations; Cumberland River Dragon Boat Festival, Cumberland River, Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the "Cumberland River Dragon Boat Festival" on the Cumberland River from mile marker 190.0 to mile marker 192.0 on September 10, 2016, to provide for the safety of life on these navigable waters during the Cumberland River Dragon Boat Festival. Our regulation for Recurring Marine Events in Captain of the Port Ohio Valley Zone identifies the regulated area for this event. During the enforcement period, no vessel may enter into, transit through or anchor in the regulated area unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

DATES: The regulations in 33 CFR 100.801, Table 1, no. 34, will be enforced from 5 a.m. until 5 p.m., on September 10, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Ashley Schad, Coast Guard Marine Safety Detachment Nashville at 615–736–5421 or *Ashley.M.Schad@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.801, Table 1, no. 34 from 5 a.m. until 5 p.m. on September 10, 2016, for the "Cumberland Dragon Boat Festival" on the Cumberland River between mile markers 190.0 and 192.0. This action is being taken to provide for the safety of life on navigable waterways during the event. Our regulation for Recurring Marine Events in Captain of the Port Ohio Valley Zone, § 100.801, Table 1, no. 34 specifies the location of the regulated area for this 2 mile bank to bank course. As provided in § 100.801, during the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Ohio Valley (COTP) or a COTP designated representative.

This notice of enforcement is issued under authority of 5 U.S.C. 552(a), and 33 U.S.C. 1233. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

Dated: September 6, 2016.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–21774 Filed 9–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0173]

RIN 1625–AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Route 1 & 9 (Lincoln Highway) Bridge across the Hackensack River, mile 2.0, Jersey City, New Jersey. The bridge owner, New Jersey Department of Transportation, submitted a request to restrict bridge openings during the morning and afternoon rush hour periods to alleviate traffic congestion resulting from area roadway closures. It is expected that this change to the regulations would provide relief to vehicular traffic while continuing to meet the reasonable needs of navigation.

DATES: This rule is effective October 11, 2016 to midnight on September 30, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type [USCG–2061–0173] in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Branch, 212–668–7165, *joe.m.arca@uscg.mil*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On June 1, 2016, we published a notice of proposed rulemaking (NPRM) entitled, *Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ* in the **Federal Register** (81 FR 34932). We received no comments on the proposed rule. No public meeting was requested and none was held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Route 1 & 9 (Lincoln Highway) Bridge at mile 2.0, across the Hackensack River between Kearny and Jersey City, New Jersey, has a vertical clearance of 40 feet at mean high water and 45 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.5.

The waterway users are predominantly recreational vessels and commercial vessels.

The owner of the bridge, New Jersey Department of Transportation, submitted a request to the Coast Guard to temporarily change the drawbridge operating regulations at 33 CFR 117.723 by adding paragraph (k). This change will facilitate additional vehicular traffic detoured from the Pulaski Skyway Bridge which is expected to be under construction through September 30, 2017.

The existing regulations presently require the bridge to open on signal at all times.

Under this temporary final rule the draw shall open on signal; except that, the draw need not open for the passage of vessel traffic between 6 a.m. and 10 a.m. and 2 p.m. and 6 p.m., Monday through Friday, except holidays.

Tide dependent deep draft vessels may request bridge openings during the two rush hour closure periods provided at least a twelve hour advance notice is given.

IV. Discussion of Comments, Changes and the Temporary Final Rule

The Coast Guard provided a comment period of 60 days and no comments were received. As a result, no changes have been made to the rule as proposed.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the bridge before and after rush hours and deep draft vessels can still transit the bridge during hours provided that at least a twelve hours advance notice is given by calling the number posted at the bridge.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received *no* comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.723 by adding paragraph (k) to read as follows:

§ 117.723 Hackensack River.

* * * * *

(k) The draw of the Route 1 & 9 (Lincoln Highway) Bridge, mile 2.0, between Kearny and Jersey City, shall open on signal; except that, the draw need not open for the passage of vessel traffic between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m., Monday through Friday, except holidays. Tide dependent deep draft vessels may request bridge openings between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m. provided at least a twelve hour advance notice is given by calling the number posted at the bridge.

Dated: August 26, 2016.

S.D. Poulin,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2016–21766 Filed 9–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0858]

Drawbridge Operation Regulation; Black Warrior River, Eutaw, Alabama

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Norfolk Southern Railroad vertical lift span bridge across the Black Warrior River, mile 267.8, at Eutaw, Greene County, Alabama. This deviation is necessary to install drive motors necessary for the continued safe operation of the bridge. This deviation allows the bridge to remain closed for two (2) three-hour periods daily, Monday through Thursday for two consecutive weeks. Additionally, this deviation allows the bridge to be closed continuously eight hours nightly on the following week, Monday evening through Friday morning. This deviation is necessary to install new bushings to the primary drive axle.

DATES: This deviation is effective from September 19, 2016 through October 7, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0682] is available at *http://www.regulations.gov.* Type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Donna Gagliano, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *Donna.Gagliano@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation requested a temporary deviation in order to perform maintenance on the Norfolk Southern Railroad vertical lift span bridge across the Black Warrior River, mile 267.8, at Eutaw, Greene County, Alabama. This deviation allows the bridge owner to install drive motors necessary to improve reliability and safe operation of the movable bridge and install new bushings to the primary drive axle. This temporary deviation allows the bridge to remain closed-to-navigation from 8 a.m. until 11 a.m. and from 1 p.m. until 4 p.m. daily, Monday through Thursday, September 19, 2016 through September 22, 2016 and September 26, 2016 through September 29, 2016. The following week of October 3, 2016 through October 7, 2016 the deviation will allow the bridge to remain closed-to-navigation from 8 p.m. until 4 a.m. daily Monday evening through Friday morning.

The Norfolk Southern Railroad vertical lift span drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that the drawbridge shall open on signal. The bridge has a vertical clearance of 18.3 feet above Bridge Reference Elevation for Navigation Clearance (BRENC), elevation 99.2 feet, in the closed-to-navigation position and 72 feet above BRENC in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows and occasional recreational craft. The Coast Guard has coordinated this temporary deviation with the Warrior-Tombigbee Waterway Association (WTWA). The WTWA representative indicated that the vessel operators will be able to schedule transits through the bridge such that operations will not significantly be hindered. Thus, it has been determined that this temporary deviation will not have a significant effect on these vessels.

Vessels able to pass through the bridge in the closed position may do so at anytime and should pass at the slowest safe speed. The bridge will be able to open for emergencies and there are no immediate alternate routes for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 6, 2016.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2016–21778 Filed 9–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0855]

Drawbridge Operation Regulation; Delaware River, Tacony, PA and Palmyra, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the SR 73/Tacony-Palmyra bridge, across the Delaware River, mile 107.2, at Tacony, PA and Palmyra, NJ. The deviation is necessary to facilitate bridge maintenance and repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 6 a.m. on Monday, September 12, 2016 through 6 p.m. on Friday, September 30, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0855] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Burlington County Bridge Commission, who owns and operates the SR 73/Tacony-Palmyra bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.716, to facilitate electrical maintenance and repairs to the bridge.

Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 6 a.m. to 6 p.m., Monday–Friday, September 12, 2016 through September 16, 2016 and September 19, 2016 through September 23, 2016. The bridge will also remain in the closed-to-navigation position from 7 a.m. to 6 p.m. on alternative work dates from September 26, 2016 through September 30, 2016. The bridge is a double bascule bridge and has a vertical clearance in the closed-to-navigation position of 50 feet above mean high water.

The Delaware River is used by a variety of vessels including U.S. government and public vessels, large commercial vessels, tug and barge traffic and recreational vessels. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to safely pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will not be able to open for emergencies and there is no immediate alternative route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 2, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–21692 Filed 9–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0513]

RIN 1625–AA11

Regulated Navigation Area; Portsmouth Naval Shipyard, Kittery, ME and Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) on the Piscataqua River near the Portsmouth Naval Shipyard, Kittery, ME between Henderson Point Light on Seavey Island and the Memorial Bridge. This RNA establishes speed restrictions to eliminate vessel wake which could endanger the lives of divers and support crews working at the Portsmouth Naval Shipyard. The speed restrictions apply to all vessels transiting the regulated area unless authorized by the First Coast Guard District Commander or the

Captain of the Port (COTP), Sector Northern New England.

DATES: This rule is effective from 12:01 a.m. on September 19, 2016 through 11:59 p.m. on November 2, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0513 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Craig Lapiejko, Waterways Management, First Coast Guard District; telephone (617) 223–8351, email *Craig.D.Lapiejko@uscg.mil.* You may also call or email Chief Petty Officer Chris Bains, Waterways Management Division, U.S. Coast Guard Sector Northern New England; telephone (207) 347–5003, email *Chris.D.Bains@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
RNA	Regulated Navigation Area
COTP	Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard was recently notified of the need for this rule. This late notice did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before the rule is necessary. Delaying implementation of this rule would be impracticable and inhibit the Coast Guard's ability to provide for the safety of divers and workers completing ship construction at the Portsmouth Naval Shipyard. Without the rule, wake from passing vessels could cause the ship to move erratically and unexpectedly, potentially injuring divers and support crews.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For reasons stated in the preceding paragraph, delaying the implementation of this rule would be impracticable and would endanger workers.

III. Legal Authority and Need for Rule

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish regulated navigation areas in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

As part of a ship construction project at the Portsmouth Naval Shipyard, divers will be working on the hull of a vessel from September 19, 2016 through November 2, 2016. The Coast Guard First District Commander has determined that unexpected and uncontrolled movement of the vessel and associated equipment due to a wake puts the divers and their support crews at significant risk for serious injury or death. In order to ensure the safety of workers during the construction period, the Coast Guard is establishing an RNA to limit the speed, thus wake, of all vessels operating near the shipyard.

IV. Discussion of the Rule

This rule places speed restrictions on all vessels transiting the navigable waters of the Piscataqua River, Kittery, ME near the Portsmouth Naval Shipyard between Henderson Point Light on Seavey Island and the Memorial Bridge from 12:01 a.m. on September 19, 2016 through 11:59 p.m. on November 2, 2016. The vessels operating within the RNA are subject to a "Slow-No Wake" speed limit. More specifically, vessels may not produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steerageway.

The COTP Sector Northern New England will cause notice of enforcement or suspension of enforcement of this regulated navigation area to be made by all appropriate means in order to affect the widest distribution among the affected segments of the public. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, COTP Northern New England maintains a telephone line that is staffed at all times. The public can obtain information concerning enforcement of the regulated navigation area by contacting the Sector Northern New England Command Center at (207) 767–0303.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the regulated navigation area. The public impact of this rule will be minimal as the temporary speed restrictions only apply to a small designated area of the Piscataqua River, causing minimal delay to a vessel's transit.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit RNA may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an RNA lasting 45 days that will limit vessel speed on the Piscataqua River in vicinity of the Portsmouth Naval Shipyard while construction work is being completed. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0513 to read as follows:

§ 165.T01–0513 Regulated Navigation Area; Portsmouth Naval Shipyard, Kittery, ME and Portsmouth, NH.

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters on the Piscataqua River, Kittery, ME and Portsmouth, NH near Portsmouth Naval Shipyard from a line drawn between Henderson Point Light "10" (LLNR 8375) at 43°04′29.3″ N., 070°44′10.2″ W. on Seavey Island and Pierce Island Range Front Light (LLNR 8355) at 43°04′25.4″ N., 070°44′25.2″ W. to the Memorial Bridge at 43°04′46.8″ N., 070°45′09.6″ W.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11 and 165.13 apply.

(2) In accordance with the general regulations, vessel movement within the RNA is subject to a "Slow-No Wake" speed limit. No vessel may produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain steerageway.

(3) All vessels operating within the RNA must comply with all directions given to them by the Captain of the Port (COTP) Sector Northern New England or his on-scene representative. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his behalf. The on-scene representative may be on a Coast Guard vessel, state marine patrol vessel, another other designated craft, or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary or Naval Harbor Security Patrol may be present to inform vessel operators of this regulation.

(4) All other relevant regulations, including but not limited to the Inland Navigation Rules (33 CFR subchapter E), remain in effect within the RNA and must be strictly followed at all times.

(c) *Enforcement period.* This section will be enforced 24 hours a day from September 19, 2016 through November 2, 2016.

(d) *Notifications.* Violations of this section may be reported to the COTP at (207) 767–0303 or on VHF-Channel 16.

Dated: August 19, 2016.

S.D. Poulin,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2016–21757 Filed 9–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0722]

RIN 1625–AA00

Safety Zone; Tennessee River, Chattanooga, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Tennessee River beginning at mile marker 463.7 and ending at mile marker 464.5, extending bank to bank near Chattanooga, Tennessee. This temporary safety zone is necessary to protect persons and property from potential damage and safety hazards during a fireworks display on or over the navigable waterway. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective and will be enforced through actual notice from 9:00 p.m. through 9:30 p.m., on September 10, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0722 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Vera Max, Marine Safety Detachment Nashville, U.S. Coast Guard; telephone 615–736–5421, email *Vera.M.Max@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor submitted the event application on July 19, 2016. This late submission did not give the Coast Guard enough time to complete the full NPRM process. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the fireworks display over the subject waterway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the fireworks display on September 10, 2016, will be a safety concern for all waters of the Tennessee River, beginning at mile marker 463.7 and ending at 464.5. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on September 10, 2016. The temporary safety zone will cover all waters of the Tennessee River, beginning at mile marker 463.7 and ending at 464.5, extending bank to bank. Transit into and through this area is prohibited from 9:00 to 9:30 p.m. on September 10, 2016. The duration of the temporary safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks displays. No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the COTP or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss the First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the temporary safety zone. The temporary safety zone will only be in effect for 30 minutes, during late evening hours, and covers an area of the waterway stretching less than one mile. The Coast Guard expects minimum adverse impact to mariners from the temporary safety zone activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP Ohio Valley or a designated representative to transit the temporary safety zone. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for Federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 30 minutes that will prohibit entry on all waters of the Tennessee River from mile 463.7 to mile 464.5. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0722 to read as follows:

§ 165.T08–0722 Safety Zone; Tennessee River, Miles 463.7 to 464.5, Chattanooga, TN.

(a) *Location.* The following area is a safety zone: all waters of the Tennessee River, bank to bank, beginning at mile marker 463.7 and ending at mile marker 464.5.

(b) *Enforcement period.* This temporary safety zone will be enforced through actual notice from 9:00 p.m. to 9:30 p.m. on September 10, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley (COTP) or designated personnel. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessels permitted to deviate from this safety zone regulation and enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(d) *Informational Broadcasts.* The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the temporary safety zone as well as any changes in the date and times of enforcement

Dated: August 31, 2016.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–21775 Filed 9–8–16; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 202

[Docket No. 2016–6]

Reconsideration Procedure for Refusals To Register: Revised Deadlines

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is altering the deadline for submitting requests to reconsider refusals to register a copyright claim. Previously, a reconsideration request had to be *received* by the Office, via mail, no later than three months after the Office issued its decision to refuse registration. This rule has led to confusion, as it can be difficult to predict when a request will physically be received by the Office, particularly given security-screening-related delays in the processing of mail. Accordingly, to provide greater certainty to applicants, the amended rule provides that reconsideration requests only need to be *postmarked* or *dispatched* no later than three months after a refusal is issued.

DATES: Effective September 9, 2016.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, Associate General Counsel, *resm@loc.gov;* John R. Riley, Attorney-Advisor, *jril@loc.gov*. Each person can be reached by telephone at 202–707–8040.

SUPPLEMENTARY INFORMATION: Congress tasked the Register of Copyrights with the responsibility to assess the validity of copyright claims submitted for registration. 17 U.S.C. 408(a); 410(b). While the Office registers the majority of copyright claims, in some cases the applications do not meet statutory or regulatory requirements and, after examination, the Office refuses to register the claimed works. If an applicant disagrees with the Office's determination, he or she may appeal the decision within the Office. This administrative procedure is known as a "request for reconsideration." A first request for reconsideration is reviewed within the Registration Program. *See* 37 CFR 202.5(b)(1)–(3). If the Registration Program again refuses to register the work, it will send the applicant a written notification stating the reasons for refusal. 37 CFR 202.5(b)(4). An applicant can appeal that refusal via a second request for reconsideration to the Copyright Office Review Board. *See* 37 CFR 202.5(c)(1)–(3).

The current regulation requires both first and second requests for reconsideration to be mailed to the Copyright Office. 37 CFR 202.5(d).[1] Prior to the amendment made here, both first and second requests for reconsideration would be considered untimely if they were received by the Copyright Office more than three months after the date of the preceding refusal to register. *See* 37 CFR 202.5(b)(3), (c)(3). This regulation permits the Register of Copyrights to suspend or waive, in whole or in part, the time requirements for submitting a request for reconsideration, though only upon a showing of good cause. 37 CFR 202.5(e).

The Office recognizes that applicants requesting reconsideration of a refusal to register a copyright claim may benefit from a rule that requires an appeal to be postmarked within the prescribed time period, rather than a deadline based upon when the appeal is received by the Office. In particular, the Office understands that it can be difficult to predict how long it will take for a reconsideration request to actually be received by the Office, particularly given security screening related delays. Accordingly, the Office has decided to adopt a "mailbox" or "postal" rule for requests for reconsideration delivered by the United States Postal Service or dispatched by a commercial carrier, courier, or messenger, which will offer applicants greater certainty while continuing to ensure that appeals are considered in a timely fashion. This rule will apply to any appeals that are postmarked or dispatched after the rule's effective date; for appeals postmarked or dispatched prior to that date, the previous regulation will apply.

The Copyright Office is publishing this amendment as a final rule without first publishing a notice of proposed rulemaking, as it constitutes a change to a "rule[ ] of agency . . . procedure, or practice." 5 U.S.C. 553(b)(A). The rule does not "alter the rights or interests of parties," but merely "alter[s] the manner in which the parties present themselves or their viewpoints to the agency." *JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 320, 326 (D.C. Cir. 1994). Other provisions that relate to submissions of reconsideration requests remain unaffected.

List of Subjects in 37 CFR Part 202

Copyright, Legal process.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.5 as follows:
■ a. In paragraph (b)(3), remove the phrase "received by the Copyright Office" and add in its place the phrase "postmarked or dispatched by a commercial carrier, courier, or messenger".
■ b. In paragraph (c)(3), remove the phrase "received in the Copyright Office" and add in its place the phrase "postmarked or dispatched by a commercial carrier, courier, or messenger".

Dated: September 2, 2016.

Maria A. Pallante,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

David S. Mao,

Acting Librarian of Congress.

[FR Doc. 2016–21671 Filed 9–8–16; 8:45 am]

BILLING CODE 1410–30–P

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[1] The Office at this time is not allowing for electronic submission of requests for reconsideration, although it will consider implementing such a procedure as part of future information technology modernization efforts.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0313; FRL–9951–87–Region 7]

Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2012 annual $PM_{2.5}$ NAAQS. Section 110 requires that each state adopt and submit a SIP to support the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These

SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective on October 11, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2016–0313. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *www.regulations.gov* and at EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7039, or by email at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. What action is EPA taking?
III. Statutory and Executive Order Reviews

I. What is being addressed in this document?

EPA is approving the infrastructure SIP submission received from the State of Kansas on November 25, 2015. The infrastructure SIP submission addressed the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 annual $PM_{2.5}$ NAAQS. A Technical Support Document (TSD) is included as part of the docket to discuss the details of this rulemaking.

The proposal to approve the infrastructure SIP submission was published on July 11, 2016, in the **Federal Register**. 81 FR 44830. The comment period ended August 10, 2016. There were no comments on the proposal.

II. What action is EPA taking?

EPA is approving the November 25, 2015, infrastructure SIP submission from the State of Kansas which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 annual $PM_{2.5}$ NAAQS.

Based upon review of the state's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas' SIP meets all applicable required elements of sections 110(a)(1) and (2) with respect to the 2012 annual $PM_{2.5}$ NAAQS.

The EPA's analysis of the submission is addressed in a TSD as part of the docket.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 24, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA is amending 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

■ 2. In § 52.870(e) the table is amended by adding entry (44) in numerical order to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(44) Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	11/16/15	9/9/16, [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable. [EPA–R07–OAR–2016–0313; FRL–]

[FR Doc. 2016–21474 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0953; FRL–9950–77–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure or Requirements for the 2008 Ozone and 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) submissions from the State of Texas for Ozone (O_3) and Nitrogen Dioxide (NO_2) National Ambient Air Quality Standards (NAAQS). These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 O_3 and 2010 NO_2 NAAQS (infrastructure SIPs or i-SIPs). These i-SIPs ensure that the State's SIP is adequate to meet the State's responsibilities under the Federal Clean Air Act (CAA).

DATES: This rule is effective on October 11, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2012–0953. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, telephone (214) 665–6454, *fuerst.sherry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means the EPA.

I. Background

The background for this action is discussed in detail in our February 8, 2016, proposal (81 FR 6483). In that document we proposed to approve elements of SIP submittals from the State of Texas for the 2008 O_3 and 2010 NO_2 NAAQS. These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 O_3 and 2010 NO_2 i-SIPs.

We received comments on the proposal submitted jointly from two organizations. Our response to the comments are below.

II. Response to Comments

Comment: We received one set of comments—submitted jointly by the Sierra Club and Downwinders at Risk—on the February 8, 2016 proposal to approve certain elements of Texas's SIP submissions for the 2008 ozone and 2010 NO_2 NAAQS. These comments are provided in the docket for today's rulemaking action. The commenters contend that EPA cannot approve the section 110(a)(2)(A) portion of Texas's 2008 ozone infrastructure SIP submission because of Fifth Circuit "binding precedent" purportedly holding this portion of the submission must "prohibit upwind sources in Texas from significantly contributing to nonattainment in downwind areas" in Texas. Specifically, the commenters contend that there are five coal-fired power plants in East Texas that "significantly contribute" to Dallas-Fort Worth's ozone nonattainment problem and that the Texas i-SIP fails to address those emissions.

Response: We disagree with the commenters that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data and modeling show current and future nonattainment. We believe that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

The commenters suggest that EPA must disapprove the Texas ozone infrastructure SIP because of the fact that areas in Texas have air quality data and modeling projections above or forecasting above the standard, which proves that the infrastructure SIP is inadequate. We disagree with the commenters because EPA does not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS. Thus, during a significant portion of the period that a state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state. In light of the structure of the CAA, our long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

Our interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in "air quality control regions" (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas in compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for "attainment" of the NAAQS and section 110(a)(2)(B) specified that the plan must include "emission limitations, schedules, and timetables for compliance with such limitations and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS]." In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (*i.e.*, were nonattainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause "as may be necessary to insure attainment and maintenance [of the NAAQS]" with "as may be necessary or appropriate to meet the applicable requirements of this chapter." Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. More detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

For all of these reasons, EPA disagrees with the commenters that we must disapprove an infrastructure SIP revision if there are monitored or forecasted violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment. Rather we believe that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time we are acting upon the submittal.

Further, we disagree with the commenters' suggestion that the Texas SIP does not adequately address the CAA section 110(a)(2)(A) requirement for enforceable emission limits based on *Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. 2002). The commenters contend that the Fifth Circuit's opinion in *Sierra Club* mandates disapproval by EPA of this i-SIP because Texas has areas measuring nonattainment of the NAAQS at issue. The Fifth Circuit's opinion is not "binding precedent" on this point, and mandates no such disapproval.

To the extent the Fifth Circuit discussed section 110(a)(2)(A) at all in *Sierra Club,* it was in dicta. The Fifth Circuit's *Sierra Club* opinion primarily concerned the distinct issue of whether EPA's "extension of the statutory date" for Beaumont, Texas to attain the one-hour ozone NAAQS (and approval of Texas's attainment SIP based on that extension) complied with the CAA.[1] The court's lone citation to CAA section 110(a)(2)(A) appears in a portion of the opinion titled, "Factual and Procedural Background," following a brief discussion of CAA section 110(a)(2)(D)(i)(I). Read in full context, it is clear that the court's mention of section 110(a)(2)(A) is merely a recitation of the regulatory background, not a holding:

> Under the CAA, states must adopt SIPs specifying emission limitations applicable to pollution sources in order to maintain and enforce each NAAQS. 42 U.S.C. 7410(a). SIPs are submitted to the EPA, which may approve, conditionally approve, or disapprove the SIPs in full or in part. *Id.* § 7410(k). Significantly, the CAA has a provision that requires SIPs to contain provisions regulating emissions that "contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard." *Id.* § 7410(a)(2)(D)(i)(I). In addition, as noted in the challenged final action, the EPA has interpreted 42 U.S.C. 7410 (a)(2)(A) as incorporating a similar requirement that an upwind area be prohibited from contributing significantly to nonattainment in a downwind area within the same state. *See* 66 FR 26,917.[2]

This lone mention of CAA section 110(a)(2)(A) was likely because EPA had invoked its interpretation of that section as one justification for why it was reasonable to read the Act as permitting the relevant deadline extension. While this passing mention of CAA section 110(a)(2)(A) was dicta, the Fifth Circuit's decision invalidating EPA's extension policy was not: Regardless of the merits of EPA's proffered interpretation of CAA section 110(a)(2)(A), the court held at *Chevron* step one that the CAA did not authorize EPA to grant extensions of the attainment date.[3]

The EPA interpretation mentioned off-hand in the *Sierra Club* opinion—*i.e.*, that section 110(a)(2)(A) incorporates a similar requirement for *intrastate* transport as section 110(a)(2)(D)(i)(I) does for *interstate* transport—is no longer the Agency's interpretation and has not been so for quite some time.[4] EPA's prior interpretation is not "carved in stone"; agencies are permitted to change their interpretations.[5] EPA's most recent interpretation of CAA section 110(a)(2)(A) can be found in the 2013 Infrastructure SIP Guidance,[6] as well as relatively recent regulatory actions.[7]

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[1] *See Sierra Club* v. *EPA,* 314 F.3d 735, 739–43 (5th Cir. 2002). The case also addressed whether EPA had reasonably concluded that no additional Reasonably Available Control Measures were required for the Beaumont area. *See id.* at 743–45.

[2] *Id.* at 737.

[3] *Id.* at 740–41.

[4] Likewise, the details of the Agency's interpretation of CAA section 110(a)(2)(D)(i)(I) have also changed, in part guided by U.S. Supreme Court and D.C. Circuit case law evaluating EPA's rulemakings under that provision. *See, e.g., North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008)

Even if the Fifth Circuit had not reversed the EPA's extension policy at *Chevron* step one (which it did), and even if the EPA had not subsequently changed its interpretation of CAA section 110(a)(2)(A) (which it has), the commenters would still be incorrect in their contention that EPA must use the same "significant contribution" analysis for intrastate emissions that EPA has recently used for interstate emissions under section 110(a)(2)(D)(i)(I). That analysis is based in part on an evaluation of "the total 'collective contribution' " of multiple upwind *interstate* sources that is captured at various significance thresholds;[8] it was never intended to apply in the intrastate context. Nor does the relevant statutory phrase, "significant contribution," appear in CAA section 110(a)(2)(A).

Section 110(a)(2)(A) of the CAA requires enforceable emission limits and control measures. As noted in the 2012 Infrastructure SIP Guidance, a different part of the CAA, part D, outlines the process, timeframe, and substantive requirements for states to bring their nonattainment areas into attainment. The Fifth Circuit's *Sierra Club* opinion says nothing to the contrary. The court in no way ruled that infrastructure SIPs must contain provisions prohibiting upwind intrastate areas from "significantly contributing" to nonattainment in downwind intrastate areas, or that EPA must apply the same technical analysis to intrastate emissions as it does for interstate emissions under a different subsection. Commenters' reliance on the Fifth Circuit's opinion as setting forth that precedent is misplaced. In short, we disagree that the *Sierra Club* opinion constitutes "binding precedent" requiring us to disapprove the infrastructure SIP for CAA section 110(a)(2)(A).

III. Final Action

We are approving elements of the (1) December 13, 2012, SIP submittal for the State of Texas pertaining to the implementation, maintenance and enforcement of the 2008 ozone NAAQS, and; (2) December 7, 2012, SIP submittal pertaining to the implementation, maintenance and enforcement of the 2010 nitrogen dioxide NAAQS as outlined in our February 8, 2016, proposal. Specifically, EPA is approving the following infrastructure elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i) (portions pertaining to PSD for 2008 O_3 and 2010 NO_2 and portions pertaining to nonattainment and interference with maintenance for 2010 NO_2), D(ii), (E), (F), (G), (H), (K), (L) and (M).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

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(evaluating EPA's Clean Air Interstate Rule, 70 FR 25,162 (May 12, 2005); *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *rev'd* 134 S. Ct. 1584 (2014), *remanded to* 795 F.3d 118 (D.C. Cir. 2015) (evaluating EPA's Cross-State Air Pollution Rule, 76 FR 48208 (Aug. 8 2011)).

[5] *See Nat'l Cable and Telecomms. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 981–82 (2005) (quoting *Chevron, U.S.A., Inc.* v. *NRDC,* 467 U.S. 863–64 (1984)).

[6] Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).

[7] *See, e.g.,* 80 FR 33840.

[8] *See, e.g.,* 76 FR 48208, 48236–37 (Aug. 8, 2011).

Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 31, 2016.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270(e), the table titled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding entries at the end for "Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard" and "Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard" to read as follows.

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
*	* *		* *	* *
Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard.	Statewide	12/7/2012	9/9/2016, [Insert **Federal Register** citation].	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portions pertaining to nonattainment and interference with maintenance), D(ii), (E), (F), (G), (H), (K), (L) and (M).
Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard.	Statewide	12/13/2012	9/9/2016, [Insert **Federal Register** citation].	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portion pertaining to PSD), D(ii), (E), (F), (G), (H), (K), (L) and (M).

[FR Doc. 2016–21593 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0238; FRL–9951–94–Region 1]

Air Plan Approval; Connecticut; NO_X Emission Trading Orders as Single Source SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision continues to allow facilities to create and/or use emission credits using NO_X Emission Trading and Agreement Orders (TAOs) to comply with the NO_X emission limits required by Regulations of Connecticut State Agencies (RCSA) section 22a-174–22 (Control of Nitrogen Oxides). The intended effect of this action is to approve the individual trading orders to allow facilities to determine the most cost-effective way to comply with the state regulation. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This final rule is effective on October 11, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R01–OAR–2015–0238. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1657, fax number (617) 918–0657, email *Dahl.Donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Table of Contents

I. Summary of SIP Revision
II. Final Action
III. Statutory and Executive Order Reviews

I. Summary of SIP Revision

On November 15, 2011, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of eighty-nine source-specific Trading Agreement and Orders (TAOs) that allow twenty-four individual stationary sources of nitrogen oxide (NO_X) emissions to create and/or trade NO_X emission credits in order to ensure more effective compliance with EPA SIP-approved state regulations for reducing NO_X emissions. We previously approved source-specific TAOs of the same kind issued by CT DEEP under this program for these same sources on September 28, 1999 (64 FR 52233), March 23, 2001 (66 FR 16135), and September 9, 2013 (78 FR 54962). The November 15, 2011 SIP submittal also includes Consent Order 8029A issued to Hamilton Sundstrand which addresses Volatile Organic Compound (VOC) emissions.

On June 15, 2016 (81 FR 38999) EPA published a notice of proposed rulemaking (NPR) for the State of Connecticut's 2011 SIP revision submittal, proposing approval of the TAOs, except for Consent Order 8029A. The NPR also proposed approval of the revised TAO 8110A issued to Yale University. This TAO was originally submitted as part of a July 1, 2004 SIP revision from Connecticut, and was modified by CT DEEP on May 29, 2015.

The rationale supporting EPA's proposed rulemaking action is explained in the published NPR. The NPR is available in the docket for this rulemaking at *www.regulations.gov,* Docket ID Number EPA–R01–OAR–2015–0238. EPA did not receive any public comments on the NPR.

II. Final Action

The EPA is approving into the Connecticut SIP the 89 TAOs contained in the State of Connecticut's 2011 SIP revision request as well as the revised TAO 8110A for Yale University.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and Rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: August 17, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

■ 2. Section 52.377 is amended by adding paragraph (m)(2) to read as follows:

§ 52.377 Control Strategy: Ozone.

* * * * *

(m) * * *

(2) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on November 15, 2011 and July 1, 2004. The revisions consist of 90 single source emission trading orders necessary for satisfying Reasonable Available Control Technology requirements for nitrogen oxides during specific time periods.

(i) Trading Agreement and Order No. 8093C, Modification No. 2 issued to Pfizer in Groton.

(ii) Trading Agreement and Order No. 8093C, Modification No. 3 issued to Pfizer in Groton.

(iii) Trading Agreement and Order No. 8136A, Modification No. 1 issued to Pfizer in Groton.

(iv) Trading Agreement and Order No. 8136A, Modification No. 2 issued to Pfizer in Groton.

(v) Trading Agreement and Order No. 8296 issued to Pfizer in Groton.

(vi) Trading Agreement and Order No. 8109, Modification No. 1 issued to Hamilton Sundstrand Corporation in Windsor Locks.

(vii) Trading Agreement and Order No. 8109, Modification No. 2 issued to Hamilton Sundstrand Corporation in Windsor Locks.

(viii) Trading Agreement and Order No. 8109, Modification No. 3 issued to Hamilton Sundstrand Corporation in Windsor Locks.

(ix) Trading Agreement and Order No. 8291 issued to Hamilton Sundstrand Corporation in Windsor Locks.

(x) Trading Agreement and Order No. 8291, Modification No. 1 issued to Hamilton Sundstrand Corporation in Windsor Locks.

(xi) Trading Agreement and Order No. 8114A, Modification No. 1 issued to Cytec Industries, Inc. in Wallingford.

(xii) Trading Agreement and Order No. 8114A, Modification No. 2 issued to Cytec Industries, Inc. in Wallingford.

(xiii) Trading Agreement and Order No. 8115B, Modification No. 1 issued to University of Connecticut in Storrs.

(xiv) Trading Agreement and Order No. 8115B, Modification No. 2 issued to University of Connecticut in Storrs.

(xv) Trading Agreement and Order No. 8115B, Modification No. 3 issued to University of Connecticut in Storrs.

(xvi) Trading Agreement and Order No. 8116B, Modification No. 1 issued to Connecticut Resources Recovery Authority in Hartford.

(xvii) Trading Agreement and Order No. 8116B, Modification No. 2 issued to Connecticut Resources Recovery Authority in Hartford.

(xviii) Trading Agreement and Order No. 8302 issued to Connecticut Resources Recovery Authority in Hartford.

(xix) Trading Agreement and Order No. 8119A, Modification No. 2 issued to City of Norwich, Department of Public Utilities in Norwich.

(xx) Trading Agreement and Order No. 8119A, Modification No. 3 issued to City of Norwich, Department of Public Utilities in Norwich.

(xxi) Trading Agreement and Order No. 8304 issued to City of Norwich, Department of Public Utilities in Norwich.

(xxii) Trading Agreement and Order No. 8120A, Modification No. 1 issued to Sikorsky Aircraft Corporation in Stratford.

(xxiii) Trading Agreement and Order No. 8120A, Modification No. 2 issued to Sikorsky Aircraft Corporation in Stratford.

(xxiv) Trading Agreement and Order No. 8293 issued to Sikorsky Aircraft Corporation in Stratford.

(xxv) Trading Agreement and Order No. 8293, Modification No. 1 issued to Sikorsky Aircraft Corporation in Stratford.

(xxvi) Trading Agreement and Order No. 8123A, Modification No. 1 issued to Algonquin Gas Transmission Company in Cromwell.

(xxvii) Trading Agreement and Order No. 8123A, Modification No. 2 issued to Algonquin Gas Transmission Company in Cromwell.

(xxviii) Trading Agreement and Order No. 8134A, Modification No. 1 issued to United Technologies Corporation in East Hartford.

(xxix) Trading Agreement and Order No. 8134A, Modification No. 2 issued to United Technologies Corporation in East Hartford.

(xxx) Trading Agreement and Order No. 8289 issued to United Technologies Corporation in East Hartford.

(xxxi) Trading Agreement and Order No. 8154A, Modification No. 1 issued to Combustion Engineering, Inc. in Windsor.

(xxxii) Trading Agreement and Order No. 8154A, Modification No. 2 issued to Combustion Engineering, Inc. in Windsor.

(xxxiii) Trading Agreement and Order No. 8180A, Modification No. 2 issued to Connecticut Jet Power LLC in Branford, Greenwich, and Torrington.

(xxxiv) Trading Agreement and Order No. 8180A, Modification No. 3 issued to Connecticut Jet Power LLC in Branford, Greenwich, and Torrington.

(xxxv) Trading Agreement and Order No. 8181A, Modification No. 2 issued to Devon Power LLC in Milford.

(xxxvi) Trading Agreement and Order No. 8181A, Modification No. 3 issued to Devon Power LLC in Milford.

(xxxvii) Trading Agreement and Order No. 8219A, Modification No. 2 issued to Devon Power LLC in Milford.

(xxxviii) Trading Agreement and Order No. 8251A, Modification No. 2 issued to Devon Power LLC in Milford.

(xxxix) Trading Agreement and Order No. 8251A, Modification No. 3 issued to Devon Power LLC in Milford.

(xl) Trading Agreement and Order No. 8182A, Modification No. 2 issued to Middleton Power LLC in Middleton.

(xli) Trading Agreement and Order No. 8182A, Modification No. 3 issued to Middleton Power LLC in Middleton.

(xlii) Trading Agreement and Order No. 8213A, Modification No. 2 issued to Middleton Power LLC in Middleton.

(xliii) Trading Agreement and Order No. 8213A, Modification No. 3 issued to Middleton Power LLC in Middleton.

(xliv) Trading Agreement and Order No. 8214A, Modification No. 2 issued to Middleton Power LLC in Middleton.

(xlv) Trading Agreement and Order No. 8214A, Modification No. 3 issued to Middleton Power LLC in Middleton.

(xlvi) Trading Agreement and Order No. 8215A, Modification No. 2 issued to Middleton Power LLC in Middleton.

(xlvii) Trading Agreement and Order No. 8215A, Modification No. 3 issued to Middleton Power LLC in Middleton.

(xlviii) Trading Agreement and Order No. 8183A, Modification No. 2 issued to Montville Power LLC in Montville.

(xlix) Trading Agreement and Order No. 8183A, Modification No. 3 issued to Montville Power LLC in Montville.

(l) Trading Agreement and Order No. 8216A, Modification No. 2 issued to Montville Power LLC in Montville.

(li) Trading Agreement and Order No. 8216A, Modification No. 3 issued to Montville Power LLC in Montville.

(lii) Trading Agreement and Order No. 8217A, Modification No. 2 issued to Montville Power LLC in Montville.

(liii) Trading Agreement and Order No. 8217A, Modification No. 3 issued to Montville Power LLC in Montville.

(liv) Trading Agreement and Order No. 8184A, Modification No. 2 issued to Norwalk Power LLC in Norwalk.

(lv) Trading Agreement and Order No. 8184A, Modification No. 3 issued to Norwalk Power LLC in Norwalk.

(lvi) Trading Agreement and Order No. 8218A, Modification No. 2 issued to Norwalk Power LLC in Norwalk.

(lvii) Trading Agreement and Order No. 8218A, Modification No. 3 issued to Norwalk Power LLC in Norwalk.

(lviii) Trading Agreement and Order No. 8221A, Modification No. 1 issued to Dominion Nuclear Connecticut, Inc. in Waterford.

(lix) Trading Agreement and Order No. 8221A, Modification No. 2 issued to Dominion Nuclear Connecticut, Inc. in Waterford.

(lx) Trading Agreement and Order No. 8222A, Modification No. 1 issued to Dominion Nuclear Connecticut, Inc. in Waterford.

(lxi) Trading Agreement and Order No. 8222A, Modification No. 2 issued to Dominion Nuclear Connecticut, Inc. in Waterford.

(lxii) Trading Agreement and Order No. 8288 issued to Dominion Nuclear Connecticut, Inc. in Waterford.

(lxiii) Trading Agreement and Order No. 8288, Modification No. 1 issued to Dominion Nuclear Connecticut, Inc. in Waterford.

(lxiv) Trading Agreement and Order No. 8240, Modification No. 2 issued to PSEG Power Connecticut LLC in New Haven.

(lxv) Trading Agreement and Order No. 8240, Modification No. 3 issued to PSEG Power Connecticut LLC in New Haven.

(lxvi) Trading Agreement and Order No. 8243, Modification No. 1 issued to PSEG Power Connecticut LLC in New Haven.

(lxvii) Trading Agreement and Order No. 8243, Modification No. 2 issued to PSEG Power Connecticut LLC in New Haven.

(lxviii) Trading Agreement and Order No. 8241, Modification No. 2 issued to PSEG Power Connecticut LLC in Bridgeport.

(lxix) Trading Agreement and Order No. 8241, Modification No. 3 issued to PSEG Power Connecticut LLC in Bridgeport.

(lxx) Trading Agreement and Order No. 8244, Modification No. 2 issued to PSEG Power Connecticut LLC in Bridgeport.

(lxxi) Trading Agreement and Order No. 8244, Modification No. 3 issued to PSEG Power Connecticut LLC in Bridgeport.

(lxxii) Trading Agreement and Order No. 8253, Modification No. 2 issued to PSEG Power Connecticut LLC in Bridgeport.

(lxxiii) Trading Agreement and Order No. 8253, Modification No. 3 issued to

PSEG Power Connecticut LLC in Bridgeport.

(lxxiv) Trading Agreement and Order No. 8301 issued to PSEG Power LLC, PSEG Fossil LLC, and PSEG Power Connecticut LLC in Bridgeport.

(lxxv) Trading Agreement and Order No. 8305 issued to PSEG Power LLC, PSEG Fossil LLC, and PSEG Power Connecticut LLC in New Haven and Bridgeport.

(lxxvi) Trading Agreement and Order No. 8249, Modification No. 2 issued to Capitol District Energy Center Cogeneration Associates in Hartford.

(lxxvii) Trading Agreement and Order No. 8249, Modification No. 3 issued to Capitol District Energy Center Cogeneration Associates in Hartford.

(lxxviii) Trading Agreement and Order No. 8298 issued to Capitol District Energy Center Cogeneration Associates in Hartford.

(lxxix) Trading Agreement and Order No. 8261, Modification No. 1 issued to Algonquin Power Windsor Locks LLC in Windsor Locks.

(lxxx) Trading Agreement and Order No. 8261, Modification No. 2 issued to Algonquin Power Windsor Locks LLC in Windsor Locks.

(lxxxi) Trading Agreement and Order No. 8299 issued to Algonquin Power Windsor Locks LLC in Windsor Locks.

(lxxxii) Trading Agreement and Order No. 8269 issued to Cascades Boxboard Group Connecticut LLC in Versailles.

(lxxxiii) Trading Agreement and Order No. 8269, Modification No. 1 issued to Cascades Boxboard Group Connecticut LLC in Versailles.

(lxxxiv) Trading Agreement and Order No. 8297 issued to Cascades Boxboard Group Connecticut LLC in Versailles.

(lxxxv) Trading Agreement and Order No. 8272 issued to NE Hydro Generating Company in Preston.

(lxxxvi) Trading Agreement and Order No. 8279 issued to First Light Hydro Generating Company in Preston.

(lxxxvii) Trading Agreement and Order No. 8303 issued to First Light Hydro Generating Company in Preston.

(lxxxviii) Trading Agreement and Order No. 8300 issued to NRG Energy, Inc., Middletown Power LLC, NRG Middletown Operations Inc., Montville Power LLC, NRG Montville Operations Inc., Norwalk Power LLC, NRG Norwalk Harbor Operations Inc., and Connecticut Jet Power LLC in Branford, Greenwich, Torrington, Middletown, Norwalk, Milford, and Montville.

(lxxxix) Trading Agreement and Order No. 8306 issued to NRG Energy, Inc., Middletown Power LLC, NRG Middletown Operations Inc., Montville Power LLC, NRG Montville Operations Inc., Norwalk Power LLC, and NRG Norwalk Harbor Operations Inc. in Middletown, Montville, and Norwalk.

(xc) Trading Agreement and Order No. 8110A issued to Yale University in New Haven.

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[FR Doc. 2016–21453 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0861; FRL–9950–32–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the General Definitions for Texas New Source Review and the Minor NSR Qualified Facilities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving and disapproving portions of revisions to the Texas State Implementation Plan (SIP) pertaining to the Texas New Source Review (NSR) program submitted on March 13, 1996; July 22, 1998; September 11, 2000; September 4, 2002; and October 5, 2010. Specifically, the EPA is approving the severable portions of the amendments to the General Definitions for the Texas NSR program, and the Minor NSR Qualified Facilities Program. The EPA is disapproving a severable portion of the General Definition of "modification of existing facility" submitted on October 5, 2010. We are taking these actions under section 110, parts C and D of the Clean Air Act (CAA).

DATES: This rule is effective on October 11, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2010–0861. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, (214) 665–2115, *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means the EPA.

I. Background

The background for this action is discussed in detail in our May 2, 2016 proposal. *See* 81 FR 26180. In that document we proposed to approve the Texas Qualified Facilities Program as a component of the Texas Minor NSR program as submitted on October 5, 2010. We also proposed to approve several updates to the General Definitions for Permitting submitted from July 22, 1998 through October 5, 2010, with one exception. We proposed to disapprove the severable portion of the definition of "modification of existing facility" pertaining to modifications made at natural gas processing facilities without a case-by-case permit as submitted on October 5, 2010. We received comments from three parties; our response to the comments received on our proposed action are summarized below.

II. Response to Comments

Comment: We received two supportive comment letters from the Texas Commission on Environmental Quality (TCEQ) and the Texas Chemical Council, wherein the commenters reiterated the objectives of the proposed rulemaking and expressed support for the EPA finalizing as proposed.

Response: The EPA appreciates the support of the commenters. No changes were made to the proposed rule as a result of these comments.

Comment: The Lone Star Chapter of the Sierra Club submitted several comments regarding anti-backsliding requirements of the CAA. First, the commenter generally opposed any weakening in the Texas SIP if it fails to meet the anti-backsliding requirements of the CAA section 110(l) and stated that backsliding must not be allowed by the EPA in the Texas SIP. Second, the commenter provided a link to the TCEQ Agenda Item Request for the SIP Revision Adoption of the Houston-Galveston-Brazoria (HGB) Area Redesignation Substitute for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard (NAAQS). The commenter stated that "If Sierra Club understands this Texas SIP change correctly, part of the proposal would significantly change the threshold for emissions that would trigger such controls/trading. The netting trigger would increase substantially (from 5 to 40), a major source would change from

25 to 100, and a major modification would go from 25 to 40. Companies would be able to break a modification into multiple, smaller modifications and effectively avoid controls. Texas urban air quality would suffer death from 1000 cuts. This unacceptable backsliding change could be devastating to air quality. Companies that were planning major air quality control projects in hopes of trading credits for profit are choosing not to make those improvements, because their potential market would disappear because of the proposed loophole."

Response: The EPA understands the commenter's concern about backsliding. We evaluate proposed revisions to a SIP under CAA section 110(l). This evaluation under section 110(l) is generally referred to as an "anti-backsliding demonstration" because it analyzes whether a proposed change to the SIP will result in "backsliding"; *i.e.,* the scenario where a change to the Texas SIP would result in worsening air quality that could interfere with an area's ability to attain or maintain the NAAQS or interfere with any other applicable requirements of the CAA. We believe that the commenter has three main concerns: (1) The commenter is generally concerned that approval of the Texas Qualified Facilities Program will result in backsliding in the Texas SIP; (2) the commenter is concerned that approval of the redesignation substitute for the 1997 8-hour ozone NAAQS in the HGB nonattainment area will result in backsliding; and (3) the commenter is concerned that the Texas Qualified Facilities Program will result in backsliding upon the approval of the redesignation substitute for the 1997 8-hour ozone NAAQS in the HGB nonattainment area. We address each of these three concerns below.

First, as we explained in our proposed approval of the Texas Qualified Facilities Program at 81 FR 26180, 26182—26183, we have evaluated the program as a revision to the Texas Minor NSR SIP and with respect to the requirements of CAA section 110(l). Our evaluation shows that the program is designed to allow an existing permitted facility to increase allowable emissions, provided that another permitted facility has a corresponding decrease in permitted allowables.[1] The program requires enforceable changes be made to the underlying permits or authorizations to reflect the new allowable emission rate for each facility, and prohibits any net increase in permitted allowable emissions. The relevant TCEQ authorizations and permitting programs have all been SIP approved; each of these programs require the TCEQ to issue an authorization or permit that will be protective of the NAAQS and air quality consistent with the general permitting requirements at 40 CFR 51.160–51.164. As such, any existing permitted allowables have been issued at levels protective of air quality.[2] Therefore if permitted facilities trade permitted allowable emission rates, there will be no backsliding in permitted allowable emissions. The inclusion of the qualified facilities changes into the relevant permits or authorizations further ensures that the changes are federally enforceable and will not violate Texas control strategies or interfere with attainment of the NAAQS, reasonable further progress, control measures, or PSD increment. *See* 35 TexReg 8944, 8960. The EPA continues to find that the Qualified Facilities Program will not result in backsliding of air quality requirements because the program is limited to permitted facilities and permitted emission allowables. No changes have been made to the proposed rule as a result of this comment.

Regarding the commenter's second concern, that the proposed approval of the redesignation substitute in HGB for the 1997 8-hour ozone NAAQS will result in backsliding, the EPA finds that this general concern is not relevant to the proposed approval of the Texas Qualified Facilities program into the Texas Minor NSR SIP. The EPA has proposed a separate action on the redesignation substitute request for the 8-hour ozone NAAQS for HGB and invited the public to submit comments specifically on the effect of the redesignation substitute in this separate action. See the separate rulemaking docket EPA–R06–OAR–2015–0609 and our proposed rulemaking at 81 FR 33166. We will address all comments received on the proposed redesignation substitute, including any comments received regarding the applicable major source and major modification thresholds in HGB, in this separate rulemaking action. No changes have been made to the proposed rule as a result of this comment.

While we are not addressing general concerns about the impact of the redesignation substitute in the HGB area in this action, we do believe it is appropriate to address the commenter's final concern that the use of the Qualified Facilities Program in HGB after the approval of the redesignation substitute will result in backsliding. The commenter is correct that if and when the redesignation substitute is effective, the major source and major modification thresholds in HGB will increase because the only applicable nonattainment area designation in HGB will be the marginal designation for the 2008 8-hour ozone NAAQS. 40 CFR 81.344. The EPA believes it is likely that more new sources and modifications will be permitted under the SIP-approved Texas Minor NSR mechanisms as a result of the increased thresholds. While we anticipate an increase in the number of Minor NSR permitting actions and a correlative decrease in Major NSR permitting actions, we cannot predict whether more changes will occur using the Qualified Facilities Program versus other SIP-approved Minor NSR mechanisms. However, we disagree that any increase in usage of the Qualified Facilities Program under the applicable thresholds will result in backsliding of air quality requirements in the HGB nonattainment area. The Texas SIP includes a suite of approved permitting regulations for both Minor and Major NSR, which will continue to apply in the event of approval of the redesignation substitute in the HGB area. Each of these programs has been evaluated and approved by EPA as consistent with the requirements of the CAA and protective of air quality, including the requirements at 40 CFR 51.160 whereby the TCEQ cannot issue a permit or authorize an activity that will result in a violation of applicable portions of the control strategy or that will interfere with attainment or maintenance of a national standard. So moving forward to a time when the HGB area has a marginal designation as the only applicable nonattainment designation, new sources and modifications will continue to be permitted and authorized under the existing SIP requirements if they are determined to be protective of air quality. As explained in our proposed rulemaking, the Qualified Facilities Program can only be used by facilities with existing permits or authorizations—that means participating facilities were either permitted and authorized under the 1997 8-hour ozone requirements or will have to be authorized/permitted under the new 2008 8-hour ozone requirements before a qualified change occurs. Regardless, each participating facility will have a permitted allowable emission rate that may be increased commensurate with a simultaneous decrease in another permitted allowable emission rate; resulting in no net allowable increase. As explained in our proposed approval, relying on permitted allowable emissions is appropriate for a Minor NSR program. Further, a source can only use netting under the Qualified Facilities Program to the extent that any net increase in actual emissions is below the applicable major source threshold. Because the permitted allowable emission rates are established, or will be established, by the TCEQ as protective of air quality and the NAAQS, we continue to maintain that the use of the Qualified Facilities Program will function as proposed and will not result in backsliding. No changes have been made to the proposed rule as a result of this comment.

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[1] The TCEQ has clarified in the preamble to the final adoption of the Qualified Facilities program that the term "facility" is consistent with the EPA's use of the term "emissions unit." *See* 35 TexReg 8944, 8960, October 1, 2010.

[2] Throughout this final rule, we use "permitted allowables" and "permitted facilities" to collectively refer to the allowable emission rates established via a SIP-approved authorization or permit program.

We also disagree that companies could legally break what would otherwise be major modifications into multiple, smaller changes using the Qualified Facilities Program to effectively avoid controls. The EPA views this practice as circumvention of Major NSR requirements. Based on our regulations, policy and guidance, any company circumventing Major NSR requirements by breaking modifications into multiple, smaller modifications or changes would be subject to possible enforcement actions.[3]

III. Final Action

Section 110(k)(3) of the Act states that the EPA may partially approve and partially disapprove a SIP submittal if we find that only a portion of the submittal meets the requirements of the Act. We find that the majority of the October 5, 2010 revision to the Texas SIP is approvable because the submitted rules are adopted and submitted in accordance with the CAA and are consistent with the EPA's regulations regarding NSR and Minor NSR. Therefore, the EPA approves the following as a revision to the Texas SIP under section 110 and parts C and D of the CAA:

- Substantive and non-substantive revisions to the General Definitions at 30 TAC Section 116.10, as initially adopted on June 17, 1998 and submitted on July 22, 1998 and revised through the October 5, 2010 submittal, with the exception of 30 TAC Section 116.10(9)(F). Note that 30 TAC Section 116.10(5)(F) has not been submitted or proposed for inclusion in the Texas SIP.
- New section 30 TAC Section 116.17 establishing the definitions for the Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010.
- Substantive revisions to 30 TAC Section 116.116(e)(1)–(e)(11) creating the Texas Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010.
- New section 30 TAC Section 116.117 establishing the documentation and notification requirements for the Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010. Note that 30 TAC Section 116.117(a)(4)(B) has not been submitted or proposed for inclusion in the Texas SIP.
- Revisions to 30 TAC Section 116.311(a)(2), providing that revisions authorized under the Qualified Facilities Program are not subject the permit renewal provisions[4] under 30 TAC Section 116.311, as adopted by the State on June 17, 1998 and submitted on July 22, 1998; and further revised by the adoption of August 21, 2002 and submitted on September 4, 2002.
- The SIP narrative titled "Revisions to the State Implementation Plan (SIP) Concerning the Qualified Facility Program as Authorized by Senate Bill 1126" as submitted on October 5, 2010.

The EPA's approval does not make federally enforceable any Qualified Facility actions that were authorized by the State before the effective date of the EPA's final approval of the Qualified Facilities Program. Additionally, as a result of today's final approval, we are revising the existing provisions in 40 CFR 52.2270(c) and (e) to show the correct approval status of the Texas Minor NSR Qualified Facilities program. We are also deleting the provisions codifying our prior disapproval of the Texas Minor NSR Qualified Facilities program at 40 CFR 52.2273(b)(1)(iii), (b)(1)(iv), and (b)(2)–(4), and our prior disapproval of the definition of "BACT" at 40 CFR 52.2273(d)(1)(i).

We are also disapproving the severable portion of the definition of "modification of existing facility" at 30 TAC Section 116.10(9)(F) pertaining to natural gas processing facilities as submitted on October 5, 2010. The EPA previously disapproved this provision on November 17, 2011, as promulgated at 30 TAC Section 116.10(11)(G) in the March 13, 1996; July 22, 1998 and the September 4, 2002 Texas SIP submittals. The state resubmitted the provision on October 5, 2010, unchanged with the exception of changing the numbering to 30 TAC Section 116.10(9)(F) and provided no additional evidence to substantiate inclusion in the Texas Minor NSR program or to address the anti-backsliding requirements under CAA section 110(l). As such, we find that this provision is not clearly limited to Minor NSR and is disapprovable as inconsistent with the requirements of section 110 of the Act and the EPA's regulations under 40 CFR 51.160–51.164 regarding Minor NSR. The provision in subparagraph (F) in the definition of "modification of existing facility" that we are disapproving was not submitted to meet a mandatory requirement of the CAA. Therefore, EPA is not imposing any sanctions and no Federal Implementation Plan clocks will be triggered. *See* CAA section 179(a).

At this time the EPA is also finalizing several unrelated corrections to the Texas SIP to accurately reflect recent federal final actions.

- We are correcting 40 CFR 52.2270(c) to include 30 TAC Section 116.112 as part of the Texas SIP. On December 7, 2005, the EPA approved 30 TAC Section 116.112—Distance Limitations as adopted by the TCEQ on January 14, 2004. *See* 70 FR 72720. As a result of this final approval, we included this provision in the table of EPA-Approved Regulations in the Texas SIP at 40 CFR 52.2270(c). 30 TAC Section 116.112 was inadvertently removed from 40 CFR 52.2270(c) due to a typographical error in a later final rulemaking. We have taken no action to remove the Distance Limitation provisions at 30 TAC Section 116.112 from the Texas SIP; therefore, we are merely correcting a clerical error.
- The EPA is also correcting 40 CFR 52.2270(c) to include the date and Federal Register citation for the EPA's final approval of 30 TAC Section 116.760 into the Texas SIP. This section was included in our final approval of the Texas Flexible Permits Program on July 14, 2014; however, the table in 40 CFR 52.2270(c) does not include the date or citation of EPA's approval. We are correcting this inadvertent omission.
- The EPA is clarifying the SIP status of 30 TAC Section 116.110(c). This section was returned to the TCEQ on

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[3] *See* 54 FR 27274, June 28, 1989. *See also,* EPA's June 13, 1989, Guidance on Limiting Potential to Emit in New Source Permitting; EPA's September 18, 1989, Response to the Request for Clarification of Policy Regarding the "Net Emissions Increase"; EPA's June 23, 1993, Memorandum on the Applicability of New Source Review Circumvention Guidance to 3M, Maplewood Minnesota; 75 FR 19570–71, April 15, 2010 (proposed rule); and EPA's August 26, 2011 Letter from Stephen Page, OAQPS, to David Isaacs, Semiconductor Industry Association, pages 6–8. All of these documents are included in the docket for this rulemaking.

[4] Note that the federal regulations under the CAA do not require a permit renewal process for an approved NSR program. See 40 CFR 51.160–51.166.

June 29, 2011, as it was inappropriately submitted for inclusion in the Texas SIP. As such, we are revising 40 CFR 52.2270(c) to specify that 30 TAC Section 116.110(c) is not part of Texas' approved SIP.

- Additionally, the EPA is substantially revising 40 CFR 52.2273 to accurately reflect the disapproval status of the Texas SIP. We are deleting the following existing provisions; as a result of the deletions to 40 CFR 52.2273 described here, we are renumbering this section to improve readability.
  - ○ 40 CFR 52.2273(d)(4)(viii) because of our January 6, 2014 final approval. *See* 79 FR 00551.
  - ○ 40 CFR 52.2273(d)(5)(i) because of our November 10, 2014 final approval. *See* 79 FR 66626.
  - ○ 40 CFR 52.2273(d)(5)(ii) because of our April 1, 2014 final approval. *See* 79 FR 18183.
  - ○ 40 CFR 52.2273(f)(1) because of our April 1, 2014 final approval. *See* 79 FR 18183.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities as identified in the RFA. This action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA; therefore this action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely approves state permitting provisions that are consistent with the CAA and disapproves state permitting provisions that are inconsistent with the CAA; and therefore will have no impact on small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land or any other area of Indian country where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 1, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c), the table titled "EPA Approved Regulations in the Texas SIP" is amended by:

■ i. Revising the entries for Sections 116.10, 116.110, 116.116, 116.311, and 116.760.

■ ii. Adding entries for Sections 116.17, 116.112, and 116.117.

■ b. In paragraph (e), the table titled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding the entry "Revisions to the State Implementation Plan (SIP) Concerning the Qualified Facility Program as Authorized by Senate Bill 1126" at the end of the table.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	* *	* *
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A—Definitions				
Section 116.10	Definitions	9/15/2010	9/9/2016, [Insert **Federal Register** citation].	SIP does not include 30 TAC Section 116.10(5)(F) or 116.10(9)(F).
*	*	*	* *	* *
Section 116.17	Qualified Facility Definitions	9/15/2010	9/9/2016, [Insert **Federal Register** citation].	
*	*	*	* *	* *
Subchapter B—New Source Review Permits				
Division 1—Permit Application				
Section 116.110	Applicability	8/9/2000	7/14/2014, 79 FR 40666	SIP includes 30 TAC Section 116.110(a)(3) adopted on 6/17/1998. SIP does not include 30 TAC Sections 116.110(a)(5), 116.110(c), or 116.110(d).
*	*	*	* *	* *
Section 116.112	Distance Limitations	1/14/2004	12/7/2005, 70 FR 72720	
*	*	*	* *	* *
Section 116.116	Changes to Facilities	9/15/2010	9/9/2016, [Insert **Federal Register** citation].	SIP does not include 30 TAC Section 116.116(b)(3).
Section 116.117	Documentation and Notification of Changes to Qualified Facilities.	9/15/2010	9/9/2016, [Insert **Federal Register** citation].	SIP does not include 30 TAC Section 116.117(a)(4)(B).
*	*	*	* *	* *
Subchapter D—Permit Renewals				
*	*	*	* *	* *
Section 116.311	Permit Renewal Application	8/21/2002	9/9/2016, [Insert **Federal Register** citation].	SIP does not include 30 TAC Section 116.311(a)(6).
*	*	*	* *	* *
Subchapter G: Flexible Permits				
*	*	*	* *	* *
Section 116.760	Flexible Permit Renewal	11/16/1994	7/20/2015, 80 FR 42729	
*	*	*	* *	* *

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* *	*	*	* *	*
Revisions to the State Implementation Plan (SIP) Concerning the Qualified Facility Program as Authorized by Senate Bill 1126.	Statewide	9/15/2010	9/9/2016, [Insert **Federal Register** citation].	

■ 3. Section 52.2273 is revised to read as follows:

§ 52.2273 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Texas' plan for the attainment and maintenance of the national standards.

(b) The EPA is disapproving the following Texas SIP revisions submittals under 30 TAC Chapter 35—Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions as follows:

(1) The following provisions under 30 TAC Chapter 35, Subchapter A—Purpose, Applicability and Definitions:

(i) 30 TAC Section 35.1—Purpose—adopted November 18, 1998 and submitted December 10, 1998.

(ii) 30 TAC Section 35.2—Applicability—adopted November 18, 1998 and submitted December 10, 1998.

(iii) 30 TAC Section 35.3—Definitions—adopted November 18, 1998 and submitted December 10, 1998.

(2) The following provisions under 30 TAC Chapter 35, Subchapter B—Authority of the Executive Director:

(i) 30 TAC Section 35.11—Purpose and Applicability—adopted November 18, 1998 and submitted December 10, 1998.

(ii) 30 TAC Section 35.12—Authority of the Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

(iii) 30 TAC Section 35.13—Eligibility of the Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

(3) The following provisions under 30 TAC Chapter 35, Subchapter C—General Provisions:

(i) 30 TAC Section 35.21—Action by the Commission or Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

(ii) 30 TAC Section 35.22—Term and Renewal of Orders—adopted November 18, 1998 and submitted December 10, 1998.

(iii) 30 TAC Section 35.23—Effect of Orders—adopted November 18, 1998 and submitted December 10, 1998.

(iv) 30 TAC Section 35.24—Application for Emergency or Temporary Orders—adopted November 18, 1998 and submitted December 10, 1998. No action is taken on subsection (b) and paragraphs (e)(6)–(7) which are outside the scope of the SIP.

(v) 30 TAC Section 35.25—Notice and Opportunity for Hearing—adopted November 18, 1998 and submitted December 10, 1998. No action is taken on paragraphs (e)(1)–(8) and (11)–(15) which are outside the scope of the SIP.

(vi) 30 TAC Section 35.26—Contents of Emergency or Temporary Order—adopted November 18, 1998 and submitted December 10, 1998.

(vii) 30 TAC 35.27—Hearing Required—adopted November 18, 1998 and submitted December 10, 1998.

(viii) 30 TAC Section 35.28—Hearing Requests—adopted November 18, 1998 and submitted December 10, 1998.

(ix) 30 TAC Section 35.29—Procedures for a Hearing—adopted November 18, 1998 and submitted December 10, 1998.

(x) 30 TAC Section 35.30—Application Fees—adopted November 18, 1998 and submitted December 10, 1998.

(4) The following provisions under 30 TAC Chapter 35, Subchapter K—Air Orders:

(i) 30 TAC Section 35.801—Emergency Orders Because of a Catastrophe—adopted November 18, 1998 and submitted December 10, 1998; revised June 28, 2006 and submitted July 17, 2006.

(ii) 30 TAC Section 35.802—Applications for an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.411); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.802); revised June 28, 2006 and submitted July 17, 2006.

(iii) 30 TAC Section 35.803—Public Notification—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.412); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.803).

(iv) 30 TAC Section 35.804—Issuance of an Emergency Order—adopted November 18, 1998 and submitted December 10, 1998; revised June 28, 2006 and submitted July 17, 2006.

(v) 30 TAC Section 35.805—Contents of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.415); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.805); revised June 28, 2006 and submitted July 17, 2006.

(vi) 30 TAC Section 35.806—Requirement to Apply for a Permit or Modification—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.416); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC Section 35.806).

(vii) 30 TAC Section 35.807—Affirmation of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.414); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC Section 35.807); revised June 28, 2006 and submitted July 17, 2006.

(viii) 30 TAC Section 35.808—Modification of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC Section 116.417); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC Section 35.808); revised June 28, 2006 and submitted July 17, 2006.

(ix) 30 TAC Section 35.809—Setting Aside an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC Section 116.418); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC Section 35.809).

(c) The EPA is disapproving the Texas SIP revision submittals under 30 TAC Chapter 101—General Air Quality Rules as follows:

(1) The following provisions under 30 TAC Chapter 101, Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities:

(i) 30 TAC Section 101.222 (Demonstrations): Sections 101.222(h), 101.222(i), and 101.222(j), adopted December 14, 2005, and submitted January 23, 2006.

(ii) [Reserved]

(2) [Reserved]

(d) The EPA is disapproving the following Texas SIP revisions submittals under 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction and Modification as follows:

(1) The following provisions under 30 TAC Chapter 116, Subchapter A—Definitions:

(i) Definition of "actual emissions" in 30 TAC Section 116.10(1), submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998;

(ii) Definition of "allowable emissions" in 30 TAC Section 116.10(2), submitted March 13, 1996; repealed and re-adopted June 17, 1998 and submitted July 22, 1998; and submitted September 11, 2000.

(iii) Definition of "modification of existing facility" pertaining to oil and natural gas processing facilities adopted February 14, 1996 and submitted on March 13, 1996 at 30 TAC Section 116.10(11)(G); repealed and re-adopted June 17, 1998, submitted July 22, 1998; adopted August 21, 2002, and submitted September 4, 2002.

(iv) Definition of "modification of existing facility" pertaining to oil and natural gas processing facilities adopted September 15, 2010, and submitted October 5, 2010, as 30 TAC Section 116.10(9)(F).

(2) The following provisions under 30 TAC Chapter 116, Subchapter B—New Source Review Permits:

(i) 30 TAC Section 116.118 submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998.

(ii) [Reserved]

(3) The following provision under 30 TAC Chapter 116, Subchapter K—Emergency Orders: 30 TAC Section 116.1200—Applicability, adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC Section 116.410); revised November 18, 1998 and submitted December 10, 1998; revised January 11, 2006 and submitted February 1, 2006 (as redesignated to 30 TAC Section 116.1200).

(e) The EPA is disapproving the attainment demonstration for the Dallas/Fort Worth Serious ozone nonattainment area under the 1997 ozone standard submitted January 17, 2012. The disapproval applies to the attainment demonstration, the determination for reasonably available control measures, and the attainment demonstration motor vehicle emission budgets for 2012.

[FR Doc. 2016–21594 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2016–0453; FRL–9951–86–Region 7]

State of Iowa; Approval and Promulgation of the Title V Operating Permits Program, the State Implementation Plan, and 112(l) Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Iowa Title V Operating Permits Program, the State Implementation Plan (SIP), and the 112(l) plan. The submission revises the Title V Operating Permits Program to include a new chapter to address fees for services by the air quality program. Administrative revisions made with this rulemaking to the SIP and 112(l) plan are associated with the new chapter.

DATES: This direct final rule will be effective November 8, 2016, without further notice, unless EPA receives adverse comment by October 11, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0453, to *http://www.regulations.gov*. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7039, or by email at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to the EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. What part 70 revision is EPA approving?
III. What part 52 revision is EPA approving?
IV. Have the requirements for approval of a SIP revision been met?
V. What action is EPA taking?

I. What is being addressed in this document?

This direct final action approves revisions to the Iowa Title V Operating Permits Program, the State Implementation Plan (SIP), and the 112(l) plan. The submission revises the Title V Operating Permits Program to include a new chapter to address fees for services by the air quality program. Administrative revisions made with this rulemaking to the SIP and 112(l) plan are associated with the new chapter.

Additional information for this rulemaking can be found in the Technical Support Document located in this docket.

II. What part 70 revision is EPA approving?

The State of Iowa implements an operating permits program applicable to certain sources of air pollution in the state. One EPA requirement for a Title V program is that the permitting state must establish a fee structure sufficient to cover the costs of the program (40 CFR 70.9(b)). Due to decreased emissions, and therefore, decreased Title V emission fees, Iowa analyzed program costs and determined that a new fee structure was necessary. The State increased the fixed dollar amount of $56 per ton to $70 per ton as the maximum Title V Operating Permit fee established on the first 4,000 tons of actual emissions for each regulated pollutant emitted from a source subject to the Title V operating permit program. The state determined the fee cap in order to accommodate greater flexibility in setting future Title V fees by estimating program expenses associated with projected actual emissions for fiscal year 2017. The submission package demonstrated compliance with 40 CFR 70.9(c), Fee Demonstration, and 40 CFR 70.9(d), Use of Required Fee Revenue.

The new fee structure prompted the State of Iowa to add a new Chapter to the Iowa Administrative Code (IAC), 567–IAC Chapter 30, "Fees".[1]

Revisions with regard to fees in the Title V Operating Permits Program in 567–IAC Chapter 22, makes reference to 567–IAC Chapter 30, "Fees" in the following rules:

- 22.100 "Definitions for Title V Permits";
- 22.101 "Applicability of Title V Operating Permit Requirements";
- 22.103 "Insignificant Activities";
- 22.105 "Title V Permit Applications";
- 22.106 "Title V Permit Fees";
- 22.108 "Permit Content".

Subrule 30.4(2), "Payment of Title V annual emission fee," was added to Iowa's Title V Operating Program, and addresses fees required, documentation due dates, Phase I acid rain sources, exempted stationary sources and insignificant activities.

Details of Iowa's Title V Operating Program revisions can be found in the Technical Support Document located in this docket.

III. What part 52 revision is EPA approving?

As previously stated, the new chapter in the Iowa Administrative Code that addresses the revised fee structure initiated administrative revisions to the Iowa State Implementation Plan (SIP) and 112(l) Plan.

Revisions in the SIP amends the following rules to make reference to 567–IAC Chapter 30, "Fees" as follows:

- Chapter 20—Scope of Title—Definitions—Forms—Rules of Practice;
- Chapter 22—Controlling Pollution;
- Chapter 31—Nonattainment Areas;
- Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality. The state's 112(l) plan is revised to include, Chapter 22, subrule 22.8(1) that applies to permit-by-rule for spray booths.

Details of Iowa's SIP and 112(l) revisions can be found in the Technical Support Document located in this docket.

IV. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

V. What action is EPA taking?

EPA is approving the request to amend the Iowa Title V Operating Permits Program, the State Implementation Plan and the 112(l) plan. As noted previously in this document, the revision is consistent with applicable EPA requirements. The revision meets the requirements of the CAA, and implementing regulations. This revision is consistent with applicable EPA requirements in Title V of the CAA, 40 CFR part 70, and 40 CFR part 52.

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

VI. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the EPA-Approved Iowa Regulations described in the direct final amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2] EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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[1] Iowa has requested approval of 567–IAC Subrule 30.4(2), "Payment of Title V annual emission fee," as part of its Part 70 Operating Permits program. The remainder of Chapter 30 has not been submitted to EPA for approval.

[2] 62 FR 27968 (May 22, 1997).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 24, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q–Iowa

■ 2. In § 52.820, the table in paragraph (c) is amended by revising the entries "567–20.1", "567–22.1", "567–22.4", "567–22.5", "567–22.8", "567–22.10", "567–31.1", and "567–33.1" to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title—Definitions—Forms—Rules of Practice				
567–20.1	Scope of Title	3/15/16	9/9/16, [Insert **Federal Register** citation].	This rule is a non-substantive description of the Chapters contained in the Iowa rules. EPA has not approved all of the Chapters to which this rule refers.
*	*	*	*	*
Chapter 22–Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	3/15/16	9/9/16, [Insert **Federal Register** citation].	None.
*	*	*	*	*
567–22.4	Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD).	3/15/16	9/9/16, [Insert **Federal Register** citation].	None.
567–22.5	Special Requirements for Nonattainment Areas	3/15/16	9/9/16, [Insert **Federal Register** citation].	None.
567–22.8	Permit by Rule	3/15/16	9/9/16, [Insert **Federal Register** citation].	None.
*	*	*	*	*
567–22.10	Permitting Requirements for Country Grain Elevators, Country Grain Terminal Elevators, Grain Terminal Elevators and Feed Mill Equipment.	3/15/16	9/9/16, [Insert **Federal Register** citation].	None.

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 31—Nonattainment Areas				
567–31.1	Permit Requirements Relating to Nonattainment Areas.	3/15/16	9/9/16, [Insert **Federal Register** citation].	None.
*	*	*	*	*
Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality				
567–33.1	Purpose	3/15/16	9/9/16, [Insert **Federal Register** citation].	None.
*	*	*	*	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 4. Appendix A to part 70 is amended by adding paragraph (q) under the heading "*Iowa*" to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(q) The Iowa Department of Natural Resources submitted for program approval a revision to rules 567–22.100, 567–22.101, 567–22.103, 567–22.105, 567–22.106, 567–22.108, and added 567–30.4(2) on March 31, 2016. The State effective date is March 15, 2016. This revision to the Iowa program is approved effective November 8, 2016.

* * * * *

[FR Doc. 2016–21469 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0698; FRL–9951–95–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indiana Portion of the Louisville Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting Indiana's request to redesignate, under the Clean Air Act (CAA), the state of Indiana portion of the Louisville (KY-IN) (Madison Township in Jefferson County and Clark and Floyd Counties) nonattainment area to attainment of the 1997 annual standard for fine particulate matter (PM$_{2.5}$). EPA determined that the Louisville area has attained the 1997 annual standard, and proposed on July 11, 2013, with a supplemental proposal on June 23, 2016, to approve Indiana's request to redesignate the area. EPA is taking final action today on the proposal and supplemental proposal. EPA is also taking final action in this rulemaking on several related proposals.

Along with granting the change in the area's designation status, EPA is also approving Indiana's PM$_{2.5}$ maintenance plan for the Louisville area as a revision to the Indiana state implementation plan (SIP) as meeting the requirements of section 175A of the CAA. EPA is approving the 2008 emissions inventory for primary PM$_{2.5}$, nitrogen oxides (NO$_X$), sulfur dioxide (SO$_2$), volatile organic compounds (VOC) and ammonia as satisfying the requirement of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2025 primary PM$_{2.5}$ and NO$_X$ motor vehicle emissions budgets (MVEBs) for the Louisville area. These MVEBs will be used in future transportation conformity analyses for the area. These actions were proposed for approval in EPA's initial action on July 11, 2013. EPA received no comments in response to the above proposals.

DATES: This final rule is effective on September 9, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0698. All documents in these dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either through *www.regulations.gov* or at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5,77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for the actions?
II. What actions is EPA taking?
III. What is EPA's response to comments?
IV. Why is EPA taking these actions?
V. Final Action
VI. Statutory and Executive Order Reviews

I. What is the background for the actions?

On June 16, 2011, the Indiana Department of Environmental Management (IDEM) submitted its request to redesignate the Indiana portion of the Louisville nonattainment area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, and for EPA approval of the state's SIP revision containing a maintenance plan for the area. On July 11, 2013, (78 FR 41735), EPA proposed to grant Indiana's redesignation request and its plan for maintaining the 1997 annual $PM_{2.5}$ NAAQS. EPA also proposed approval of Indiana's MVEBs for $PM_{2.5}$ and NO_X for 2025 for the area. EPA also proposed the 2008 emissions inventory for primary $PM_{2.5}$, NO_X, SO_2, VOC and ammonia as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Additional background for this action is set forth in EPA's July 11, 2013 (78 FR 41735), proposed rulemaking. EPA published a supplement to its July 11, 2013, proposed rulemaking on June 23, 2016 (81 FR 40834). The supplement was based on valid design values for the 2013–2015 period, demonstrating attainment of the standard for the entire Louisville area using the most recent three years of data. Previous data from 2012 and beginning of 2013 had been invalidated through a technical systems audit, which is described in the supplemental proposal.

II. What actions is EPA taking?

EPA has determined that the entire Louisville area is attaining the 1997 annual $PM_{2.5}$ standards (81 FR 40834) and that the Indiana portion of the Louisville area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Thus, EPA is granting the request from the state of Indiana to change the legal designation of the Indiana portion of the Louisville area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is also taking several additional actions related to Indiana's $PM_{2.5}$ redesignation request, as discussed below.

EPA is approving the 2008 emissions inventory for primary $PM_{2.5}$, NO_X, SO_2, VOC and ammonia as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

EPA is approving Indiana's $PM_{2.5}$ maintenance plan for the Indiana portion of the Louisville area as a revision to the Indiana SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Louisville area in attainment of the 1997 annual $PM_{2.5}$ NAAQS through 2026.

EPA also finds adequate and is approving Indiana's 2025 primary $PM_{2.5}$ and NO_X MVEBs for the Louisville area. These MVEBs will be used in future transportation conformity analyses for the area.

III. What is EPA's response to comments?

EPA received no comments on either its proposed or supplemental rulemaking.

IV. Why is EPA taking these actions?

EPA has determined that the Louisville area has attained the 1997 annual $PM_{2.5}$ NAAQS. EPA has also determined that all other criteria have been met for the redesignation of the Indiana portion of the Louisville area from nonattainment to attainment of the 1997 annual $PM_{2.5}$ NAAQS and for approval of Indiana's maintenance plan for the area. *See* CAA sections 107(d)(3)(E) and 175A. EPA is also approving the 2008 emissions inventory for primary $PM_{2.5}$, NO_X, SO_2, VOC and ammonia as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. The detailed rationale for EPA's findings and actions is set forth in the proposed rule on July 11, 2013, and a supplemental proposal on June 23, 2016.

V. Final Action

EPA is determining that the Indiana portion of the Louisville area has attained the standards and that the area meets the requirements for redesignation to attainment of that standard under sections 107(d)(3)(E) and 175A of the CAA. Thus, EPA is granting the request from Indiana to change the legal designation of the Indiana portion of the Louisville area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is also approving Indiana's 1997 annual $PM_{2.5}$ maintenance plan for the Indiana portion of the Louisville area as a revision to the SIP because the plan meets the requirements of section 175A of the CAA. EPA is approving the 2008 emissions inventory for primary $PM_{2.5}$, NO_X, SO_2, VOC and ammonia as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving Indiana's 2025 primary $PM_{2.5}$ and NO_X MVEBs for the Indiana portion of the Louisville area. These MVEBs will be used in future transportation conformity analyses for the area after the effective date for the adequacy finding and approval.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves Indiana of various requirements for the Indiana portion of the Louisville area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 26, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.770, the table in paragraph (e) is amended by adding an entry for "Louisville 1997 Annual $PM_{2.5}$ Maintenance Plan" in alphabetical order to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	*	* *	* *
Louisville 1997 Annual $PM_{2.5}$ Maintenance Plan.	6/16/2011	9/9/2016, [insert **Federal Register** citation].	
* *	*	* *	* *

■ 3. Section 52.776 is amended by adding paragraphs (v)(6) and (w)(5) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(v) * * *

(6) Approval—The 1997 annual $PM_{2.5}$ maintenance plan for the Indiana portion of the Louisville (KY-IN) (Madison Township, Jefferson County and Clark and Floyd Counties), has been approved as submitted on June 16, 2011. The maintenance plan establishes 2025 motor vehicle emissions budgets for the Louisville area to be 324.04 tpy for primary $PM_{2.5}$ and 9,311.76 tpy for NO_X.

(w) * * *

(5) Indiana's 2008 NO_X, directly emitted $PM_{2.5}$, SO_2, VOC, and ammonia emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Louisville area.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 5. Section 81.315 is amended by revising the entry for "Louisville, KY-IN" in the table entitled "Indiana—1997 Annual $PM_{2.5}$ NAAQS [Primary and secondary]" to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation[a]		Classification	
	Date[1]	Type	Date[2]	Type
*	*	*	*	*
Louisville, KY-IN	9/9/2016	Attainment		Moderate.
Clark County.				
Floyd County.				
Jefferson County (part) Madison Township.				
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is 90 days after January 5, 2005, unless otherwise noted.

[2] This date is July 2, 2014, unless otherwise noted.

[FR Doc. 2016–21457 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2014–0568; FRL–9950–98–Region 3]

Outer Continental Shelf Air Regulations Consistency Update for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve an update to a portion of the Outer Continental Shelf (OCS) Air Regulations for Maryland. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act, as amended in 1990 (CAA or the Act). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. The intended effect of approving the OCS requirements for the Maryland Department of the Environment is to regulate emissions from OCS sources in accordance with the requirements for onshore sources.

DATES: This rule is effective on November 8, 2016 without further notice, unless EPA receives adverse written comment by October 11, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2014–0568 at *http://www.regulations.gov,* or via email to *campbell.dave@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55 which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. Forty CFR part 55 applies to all OCS sources offshore of the states except those locations in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such source locations within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the source were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12 of the OCS rule, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent under 40 CFR 55.4; or, (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This action is being taken in response to requirements submitted by Maryland on May 6, 2016. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as the corresponding onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist for onshore sources. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

EPA reviewed Maryland's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the CAA; that they are not designed expressly to prevent exploration and development of the OCS; and, that they are applicable to OCS sources. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. In addition, EPA has excluded administrative or procedural rules[1] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards. EPA finds that Maryland's rules meet these requirements.

III. Final Action

EPA is taking direct final action to incorporate the applicable provisions of the Code of Maryland Regulations into 40 CFR part 55 as required under section 328(a)(1) of the CAA. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the update to Maryland's OCS regulations if adverse comments are filed. This rule will be effective on November 8, 2016 without further notice unless EPA receives adverse comment by October 11, 2016. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Maryland Regulations described in the amendments to 40 CFR part 55 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as the corresponding onshore air quality control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the corresponding regulations for onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with the requirements for onshore areas, without the exercise of any policy discretion by EPA. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the OCS requirements are not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

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[1] Each COA that has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as if onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements.

This action pertaining to OCS sources in Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer Continental Shelf, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 2, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

For the reasons discussed in the preamble, 40 CFR part 55 is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(10)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(10) * * *

(i) * * *

(A) State of Maryland Requirements Applicable to OCS Sources, May 6, 2016.

* * * * *

■ 3. In appendix A to part 55, the entry for Maryland is revised to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Maryland:

(a) State Requirements.

(1) The following State of Maryland requirements are applicable to OCS Sources, May 6, 2016, State of Maryland—Department of the Environment. The following sections of Code of Maryland Regulations (COMAR) Title 26 Subtitle 11:

COMAR 26.11.01—General Administrative Provisions (Effective as of February 15, 2016)
COMAR 26.11.02—Permits, Approvals, and Registrations (Effective as of December 10, 2015)
COMAR 26.11.03—Permits, Approvals, and Registration—Title V Permits (Effective as of November 12, 2010)
COMAR 26.11.05—Air Pollution Episode System (Effective as of November 12, 2010)
COMAR 26.11.06—General Emission Standards, Prohibitions, and Restrictions (Effective as of July 08, 2013)
COMAR 26.11.07—Open Fires (Effective as of November 12, 2010)
COMAR 26.11.08—Control of Incinerators (Effective as of February 15, 2016)
COMAR 26.11.09—Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations (Effective as of July 20, 2015)
COMAR 26.11.13—Control of Gasoline and Volatile Organic Compound Storage and Handling (Effective as of July 21, 2014)
COMAR 26.11.15—Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.16—Procedures Related to Requirements for Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.17—Nonattainment Provisions for Major New Sources and Major Modifications (Effective as of July 08, 2013)
COMAR 26.11.19—Volatile Organic Compounds from Specific Processes (Effective as of September 28, 2015, 2012)
COMAR 26.11.20—Mobile Sources (Effective as of November 12, 2010)
COMAR 26.11.26—Conformity (Effective as of November 12, 2010)
COMAR 26.11.33—Architectural Coatings (Effective as of November 12, 2010)
COMAR 26.11.35—Volatile Organic Compounds from Adhesives and Sealants (Effective as of November 12, 2010)
COMAR 26.11.36—Distributed Generation (Effective as of June 13, 2011)
COMAR 26.11.39—Architectural and Industrial Maintenance (AIM) Coatings (Effective as of April 2016)

* * * * *

[FR Doc. 2016–21460 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 127

[FRL–9951–76–OECA]

NPDES Electronic Reporting Rule Implementation Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of guidance.

SUMMARY: The U.S. Environmental Protection Agency (EPA) recently promulgated the NPDES Electronic Reporting Rule ("final rule") to modernize Clean Water Act reporting for municipalities, industries, and other facilities by converting to an electronic data reporting system. This final rule requires regulated entities and state and Federal regulators to use existing, available information technology to electronically report data required by the National Pollutant Discharge Elimination System (NPDES) permit program instead of filing written paper reports.

This action will save time and resources for permittees, states, tribes, territories, and the U.S. Government while increasing data accuracy, improving compliance, and supporting EPA's goal of providing better protection of the nation's waters. This regulation will help provide greater clarity on who is and who is not in compliance and enhances transparency by providing a timelier, complete, more accurate, and nationally-consistent set of data about the NPDES program.

The final rule requires EPA to publish in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated facilities by state, tribe, and territory and by NPDES data group. This listing must identify for NPDES-regulated facilities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions. This **Federal Register** document provides an overview of the "initial recipient" term as well as the listing of the initial recipients by state, tribe, and territory and by NPDES data group and the due date for NPDES electronic data submissions. In accordance with the final rule, EPA will update this listing on its Web site and in the **Federal Register** if there are any changes.

DATES: September 9, 2016.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Mr. Carey A. Johnston (202–566–1014), Office of Compliance (mail code

2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; email address: *johnston.carey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview of the Initial Recipient Designation Process

Under the NPDES Electronic Reporting Rule (''final rule''), NPDES-regulated entities are required to submit NPDES program data to the designated initial recipient, as defined in 40 CFR 127.2(b) (see 22 October 2015; 80 FR 64064). For the final rule, the term ''initial recipient'' means the governmental entity, either the authorized state, territory, or tribe, or EPA, who first receives the NPDES program data listed in Appendix A to 40 CFR 127. The initial recipient designation is made separately for each state and by each NPDES data group, which is defined in 40 CFR 127.2(c). EPA is using the initial recipient term to help NPDES-regulated entities properly identify the recipient for their electronic NPDES program data submissions. The initial recipient provision will also help ensure that authorized NPDES programs and EPA are properly sharing these NPDES program data with each other. EPA is required by the rule to maintain the initial recipient list for each state and by each NPDES data group and publish this list on its Web site and in the **Federal Register** [see 40 CFR 127.27(c)]. Identification of the initial recipient for each NPDES data group is also included as a new NPDES permit standard condition, which authorized NPDES programs must include in NPDES permits [see 40 CFR part 122.41(l)(9)].

As necessary, the initial recipient designation can switch back and forth between the authorized state, tribe, or territory NPDES programs and EPA. EPA's goal is to help all authorized NPDES programs be the initial recipient for any data group (*e.g.,* DMRs) for which they would like to first receive the data. Below is the process for identifying the initial recipient.

- As of the effective date of the final rule (21 December 2015), the initial recipient determination is an 'opt-out' process for authorized state, tribe, or territory NPDES programs. Per section 127.27(a), an authorized NPDES program must notify EPA within 120 days of the effective date of the final rule (19 April 2016) if it wishes EPA to be the initial recipient for a particular NPDES data group. EPA received six such notices from authorized NPDES programs. For all other authorized NPDES programs, EPA is designating the authorized state, tribe, or territorial NPDES program as the initial recipient for all NPDES data groups.
- An authorized NPDES program can initially elect for EPA to be the initial recipient and then, at a later date, seek EPA approval to change the initial recipient status for one or all of the NPDES data groups from EPA to the authorized state, tribe, or territory. To make this switch, the authorized state, tribe, or territory must send a request to EPA. This request shall identify the specific NPDES data groups for which the state, tribe, or territory would like to be the initial recipient of electronic NPDES information, include a description of how its data system will be compliant with 40 CFR part 3 (including, in all cases, subpart D) and 40 CFR part 127, and the date or dates when the state, tribe, or territory will be ready to start receiving this information. Section 127.27 outlines the process for requesting the designation of initial recipient. After EPA approval of the request, EPA will update the initial recipient list and will publish the revised initial recipient listing on its Web site and in the **Federal Register**.
- An authorized NPDES program can initially elect to be the initial recipient for one or all of the NPDES data groups and then at a later date request that EPA become the initial recipient for one or all of the NPDES data groups. To make this switch the authorized state, tribe, or territory will send a request to EPA. After coordination with the state, EPA will update the initial recipient list and will publish the revised initial recipient listing on its Web site and in the **Federal Register** [see 127.27(c)].
- There is also a process in Section 127.27(d) for ensuring that authorized NPDES programs share the minimum set of NPDES program data with EPA (see Appendix A to 40 CFR part 127). This process will switch the initial recipient status from the authorized state, tribe, or territory to EPA if the authorized NPDES program is not sharing the minimum set of NPDES program data with EPA. Section 127.27(d)(4) states that, ''EPA will work with the Director of the authorized NPDES program to remediate all issues identified by EPA that prevent the authorized NPDES program from being the initial recipient.'' When the issues identified by EPA are satisfactorily resolved, EPA must update the initial recipient listing and publish the revised initial recipient listing on its Web site and in the **Federal Register**.

It should be noted that authorized NPDES programs will continue to retain their responsibilities to facilitate electronic reporting even when an authorized NPDES program elects for EPA be the initial recipient for one or more NPDES data groups. Regardless of the initial recipient status, EPA does not take over any permitting, compliance monitoring, or enforcement activities from the authorized NPDES program. In particular, the authorized NPDES program will:

- Maintain the primary roles and responsibility for implementing and enforcing the NPDES program;
- Retain the responsibility for outreach and training NPDES-regulated entities on how to register and use the appropriate electronic reporting tools;
- Retain data steward responsibilities (including review and processing error correction requests); and
- Retain the responsibility for review and processing electronic reporting waiver requests.

EPA will continue to assist authorized NPDES programs with their training and outreach needs as well as provide other support so that authorized NPDES programs can fully understand and use EPA's electronic reporting systems and thereby provide effective support to NPDES-regulated entities.

The interaction between the CROMERR requirements and the initial recipient requirements in the final rule should be noted.[1] For example, if the initial recipient status for a particular state for a particular data group switches from the state to EPA, then the NPDES-regulated entities in that data group in that state would need to ensure they register with the appropriate CROMERR-compliant system. In this example, NPDES-regulated entities will switch from using the state electronic reporting systems to EPA's electronic reporting systems (*e.g.,* NetDMR, NeT). This means that these regulated entities will need to register and obtain the necessary signing credentials for EPA's electronic reporting systems. Similarly, if the initial recipient status for a particular state, territory, or tribe for a particular data group switches from EPA to the state, then those NPDES-regulated entities in that data group in that state, territory, or tribe would switch from using an EPA electronic reporting system to a state electronic reporting system. Under this scenario, regulated entities will need to register and obtain the necessary signing credentials for the authorized NPDES program's electronic reporting systems. However, if a state, territory, or tribe is already using EPA's electronic reporting systems, the regulated entities would not need to register again as the NPDES-regulated entity will be using the same electronic reporting tool (*i.e.,* no change in the subscriber agreement that accompanies the electronic reporting tool).

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[1] EPA seeks to ensure that electronic reporting has at least the same level of legal defensibility and dependability as information that EPA would obtain through hard-copy paper submission. The Cross-Media Electronic Reporting Regulation (CROMERR), promulgated October 13, 2005, provides the legal framework for electronic reporting requirements established under all EPA environmental regulations (40 CFR part 3). See the proposed rule for more background detail on CROMERR (30 July 2013; 78 FR 46035).

II. Listing of the Initial Recipients for NPDES Electronic Reporting

The final rule requires EPA to publish in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated facilities by state, tribe, and territory and by NPDES data group [see 40 CFR 127.27(c)]. This listing must identify for NPDES-regulated facilities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions. The final rule requires authorized NPDES programs to send EPA an opt-out notice by 19 April 2016. The following is a list of the six states that sent an opt-out notice to EPA. These notices are posted on EPA's Web site that provides implementation information.

State	State elected for EPA to be initial recipient for general permit reports (NPDES Data Group No. 2)	State elected for EPA to be initial recipient for DMRs (NPDES Data Group No. 3)	State elected for EPA to be initial recipient for program reports (NPDES Data Group Nos. 4 through 10)
Georgia	Yes (All)	Yes	Yes (All).
Nebraska	Yes (All)	Yes	Yes (All).
New Jersey	No	No	Yes (only for CAFO Annual Program Report).
North Carolina	Yes (only for Low Erosivity Waivers and No Exposure Certifications).	No	No.
Oregon	Yes (All)	Yes	Yes (All).
Rhode Island	Yes (All)	Yes	Yes (All).

Note: Although not required as the initial recipient process is an 'opt-out' process, Tennessee sent notice to EPA that they intend to be the Initial Recipient for all NPDES data groups.

State that have elected for EPA to be the Initial Recipient for all of the NPDES data groups will be using EPA's electronic reporting tools (*e.g.,* NetDMR, NeT) and NPDES data system (ICIS–NPDES). It should be noted that Georgia and Rhode Island elected to use EPA's NetDMR and NPDES data system (ICIS–NPDES) prior to the effective date of the final rule. Consequently, NPDES-regulated entities in these two states that are already using NetDMR will not need to take any additional actions in response to Georgia and Rhode Island designating EPA as the Initial Recipient for DMRs (NPDES Data Group No. 3). In accordance with the final rule (see 40 CFR 127.16), NPDES-regulated entities in Nebraska and Oregon will need to register and start using NetDMR prior to the Phase 1 electronic reporting deadline (21 December 2016). New Jersey has elected for EPA to be the Initial Recipient for the Concentrated Animal Feeding Operation (CAFO) Annual Program Report [see 40 CFR 122.42(e)(4)]. In accordance with the final rule, CAFOs in New Jersey will need to register and start using NeT to submit their CAFO Annual Program Report prior to the Phase 2 electronic reporting deadline (21 December 2020). Finally, North Carolina has elected for EPA to be the Initial Recipient for Low Erosivity Waivers (LEWs) [see Exhibit 1 to 40 CFR 122.26(b)(15)] and No Exposure Certifications (NOEs) [see 122.26(g)]. In accordance with the final rule, facilities in North Carolina will need to register and start using NeT to submit their LEWs and NOEs prior to the Phase 2 electronic reporting deadline (21 December 2020).

For all other authorized NPDES programs not in the above table, the authorized state, tribe, or territorial NPDES program is the initial recipient for the NPDES programs and NPDES permits that it administers. For example, Arkansas will be the initial recipient for all NPDES Data Groups except for the Sewage Sludge/Biosolids Annual Program Reports [40 CFR part 503], as Arkansas is not authorized for the Federal Biosolids NPDES program. Likewise, Colorado will be the initial recipient for all NPDES Data Groups except for:

- Sewage Sludge/Biosolids Annual Program Reports [40 CFR part 503],
- Pretreatment Program Reports [40 CFR 403.12(i)],
- Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs [40 CFR 403.12(e) and (h)], and
- All NPDES reporting for Federal facilities.

Colorado is not authorized for the Federal Biosolids or Pretreatment NPDES programs and Colorado is not the NPDES permitting authority for Federal facilities in Colorado. It should be noted that EPA will be the initial recipient for all NPDES-regulated entities where EPA is the permitting authority or authorized NPDES program. A full listing of NPDES program authorization for each state is available on EPA's Web site (*https://www.epa.gov/npdes/npdes-state-program-information*).

Dated: August 24, 2016.

David Hindin,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 2016–21204 Filed 9–8–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2016–0151, 0152, 0154, 0155, 0156, 0157 and 0158; EPA–HQ–SFUND–2015–0139, 0575 and 0576; FRL–9952–06–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("the EPA" or "the agency") in determining

which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds ten sites to the General Superfund section of the NPL.

DATES: The document is effective on October 11, 2016.

ADDRESSES: Contact information for the EPA Headquarters:

- Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW., William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, 202–566–0276.

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Cathy Amoroso, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8637.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
- Brian Mitchell, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPR/SPEB, Lenexa, KS 66219; 913/551–7633.
- Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6578.
- Sharon Murray, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/947–4250.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (“CERCLA” or “the Act”), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (“SARA”), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes “criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.” “Removal” actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of “releases” and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the "General Superfund section") and one of sites that are owned or operated by other federal agencies (the "Federal Facilities section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System ("HRS") score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with a permanent remedy, taken instead of or in addition to removal actions" (40 CFR 300.5)). However, under 40 CFR 300.425(b)(2), placing a site on the NPL "does not imply that monies will be expended." The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the "Jones Co. Plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the remedial investigation ("RI") "is a process undertaken . . . to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's Internet site at *https://www.epa.gov/superfund/superfund-remedial-performance-measures#cc_anchor.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#tab-9.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's Web site at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.htm.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through *http://www.regulations.gov* (see table below for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified in section II.D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, State	Docket ID No.
Argonaut Mine	Jackson, CA	EPA–HQ–OLEM–2016–0151
Bonita Peak Mining District	San Juan County, CO	EPA–HQ–OLEM–2016–0152
West Vermont Drinking Water Contamination	Indianapolis, IN	EPA–HQ–SFUND–2015–0575
SBA Shipyard	Jennings, LA	EPA–HQ–SFUND–2015–0576
Anaconda Aluminum Co Columbia Falls Reduction Plant	Columbia Falls, MT	EPA–HQ–SFUND–2015–0139
Wappinger Creek	Dutchess County, NY	EPA–HQ–OLEM–2016–0155
Valley Pike VOCs	Riverside, OH	EPA–HQ–OLEM–2016–0154
Dorado Ground Water Contamination	Dorado, PR	EPA–HQ–OLEM–2016–0156
Eldorado Chemical Co., Inc.	Live Oak, TX	EPA–HQ–OLEM–2016–0157

DOCKET IDENTIFICATION NUMBERS BY SITE—Continued

Site name	City/county, State	Docket ID No.
North 25th Street Glass and Zinc	Clarksburg, WV	EPA–HQ–OLEM–2016–0158

B. What documents are available for review at the EPA headquarters docket?

The headquarters docket for this rule contains the HRS score sheets, the documentation record describing the information used to compute the score and a list of documents referenced in the documentation record for each site.

C. What documents are available for review at the EPA regional dockets?

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score. These reference documents are available only in the regional dockets.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the regional dockets for hours. For addresses for the headquarters and regional dockets, see "Addresses" section in the beginning portion of this preamble.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at *https://www.epa.gov/superfund/national-priorities-list-npl-sites-site-name* or by contacting the Superfund docket (see contact information in the beginning portion of this document).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following ten sites to the General Superfund section of the NPL. These sites are being added to the NPL based on HRS score.

General Superfund section:

State	Site name	City/county
CA	Argonaut Mine	Jackson.
CO	Bonita Peak Mining District	San Juan County.
IN	West Vermont Drinking Water Contamination	Indianapolis.
LA	SBA Shipyard	Jennings.
MT	Anaconda Aluminum Co Columbia Falls Reduction Plant	Columbia Falls.
NY	Wappinger Creek	Dutchess County.
OH	Valley Pike VOCs	Riverside.
PR	Dorado Ground Water Contamination	Dorado.
TX	Eldorado Chemical Co., Inc	Live Oak.
WV	North 25th Street Glass and Zinc	Clarksburg.

B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. The EPA is adding ten sites to the NPL in this final rule, all to the General Superfund section. Comments on the Bonita Peak Mining District (San Juan County, CO), West Vermont Drinking Water Contamination (Indianapolis, IN), SBA Shipyard (Jennings, LA) and Anaconda Aluminum Co Columbia Falls Reduction Plant (Columbia Falls, MT) sites are addressed in a response to comment support document available in the public docket concurrently with this rule.

The remaining six sites being added to the NPL in this rule did not receive any comments urging specific changes to the HRS score. The Valley Pike VOCs (Riverside, OH) site received no comments. The Dorado Ground Water Contamination (Dorado, PR) and Eldorado Chemical Co., Inc. (Live Oak, TX) sites both received only erroneous comments that were meant for other sites but were directed to incorrect docket numbers.

The Argonaut Mine (Jackson, CA) site received two comments urging EPA to list, one from a citizen and one from the Mayor of the City of Jackson. In response, EPA is placing the Argonaut Mine site on the NPL.

The Wappinger Creek (Dutchess County, NY) site received three comments, all urging EPA to list the site, one from a citizen, one anonymous and one from Senator Gillibrand. In response, EPA is placing the Wappinger Creek site on the NPL.

The North 25th Street Glass and Zinc (Clarksburg, WV) site received nine comments. Three of those comments were erroneous comments directed toward the incorrect docket. Three of the comments urged EPA to list the site and two urged EPA to clean up the site. One comment raised objections to tax payer money being wasted on hazardous waste lawsuits. In response, nothing raised in this comment impacted the HRS score or the decision to list the site on the NPL. Therefore, EPA is adding the North 25th Street Glass and Zinc site to the NPL.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

K. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation. Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802. Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 1, 2016.

Mathy Stanislaus,

Assistant Administrator, Office of Land and Emergency Management.

40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

■ 2. Table 1 of appendix B to part 300 is amended by adding entries for "Argonaut Mine", "Bonita Peak Mining District", "West Vermont Drinking Water Contamination", "SBA Shipyard", "Anaconda Aluminum Co Columbia Falls Reduction Plant", "Wappinger Creek", "Valley Pike VOCs", "Dorado Ground Water Contamination", "Eldorado Chemical Co., Inc.", and "North 25th Street Glass and Zinc" in alphabetical order by state to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
* * * * * * *			
CA	Argonaut Mine	Jackson.	
* * * * * * *			
CO	Bonita Peak Mining District	San Juan County.	
* * * * * * *			
IN	West Vermont Drinking Water Contamination	Indianapolis.	
* * * * * * *			
LA	SBA Shipyard	Jennings.	
MT	Anaconda Aluminum Co Columbia Falls Reduction Plant	Columbia Falls.	
NY	Wappinger Creek	Dutchess County.	
* * * * * * *			
OH	Valley Pike VOCs	Riverside.	
* * * * * * *			
PR	Dorado Ground Water Contamination	Dorado.	
* * * * * * *			
TX	Eldorado Chemical Co., Inc.	Live Oak.	
WV	North 25th Street Glass and Zinc	Clarksburg.	

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2016–21615 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 8

[Docket No. 2016–0001]

RIN–0930–AA22

Medication Assisted Treatment for Opioid Use Disorders; Correction

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Correcting amendment.

SUMMARY: The Health and Human Services Department (HHS) is correcting a final rule that appeared in the **Federal Register** on July 8, 2016. The final rule increased the maximum number of patients to whom an individual practitioner may dispense or prescribe certain medications, including buprenorphine, from 100 to 275. Practitioners are eligible for the increased patient limit if they have prescribed covered medications to up to 100 patients for at least one year pursuant to secretarial approval, provided that they meet certain criteria and adhere to several additional requirements aimed at ensuring that patients receive the full array of services that comprise evidence-based medication-assisted treatment (MAT) and minimize the risks that medications provided for treatment are misused or diverted. One pathway through which practitioners may become eligible to increase their patient limit is by obtaining additional credentialing from one of several credentialing bodies. In the final rule, the name of one of the credentialing bodies listed was incorrect. This action provides the correct name.

DATES: Effective on September 9, 2016.

FOR FURTHER INFORMATION CONTACT: Jinhee Lee, Division of Pharmacologic Therapies, Center for Substance Abuse Treatment, SAMHSA, 5600 Fishers Lane, Rockville, MD 20857, (240) 276–2700, email: *Jinhee.Lee@samhsa.hhs.gov*.

SUPPLEMENTARY INFORMATION: On July 8, 2016 (81 FR 44711), HHS published a final rule in the **Federal Register**, which increased the maximum number of patients to whom an individual practitioner may dispense or prescribe certain medications, including buprenorphine, from 100 to 275. One of the pathways through which practitioners can become eligible to increase their patient limit is by receiving additional credentialing.

In the final rule, the American Osteopathic Academy of Addiction Medicine (AOAAM), which provides training but not certification, was mistakenly included in the definition for "additional credentialing." HHS intended to include the American Osteopathic Association (AOA) in this definition, not AOAAM. This intention was evident in HHS's Notice of Proposed Rulemaking (NPRM), published on March 30, 2016, which proposed defining "board certification" so as to include "subspecialty board certification in addiction medicine from the American Osteopathic Association (AOA) . . . ." AOAAM, on the other hand, was not referenced within the NPRM. Accordingly, HHS gave the public notice and an opportunity to comment on its proposal to include AOA board certification as one of the credentials that would make practitioners eligible to practice at the higher patient cap. No public comments were received that related to AOA's role in the proposed rule.

HHS's intention to reference AOA (not AOAAM) was also reflected in the preamble of the final rule; AOA board certification was referenced in Section B of the Regulatory Impact Analysis, which stated that "[t]he training requirement may be satisfied in several ways: One may hold board certification in . . . addiction medicine from the American Osteopathic Association . . . ." HHS also explained in the preamble of the final rule that, "HHS removed the term 'board certification' and added 'additional credentialing' to clarify that all practitioners who currently qualify to treat up to 100 patients are eligible for the higher patient limit if they are included as specialists as described in 21 U.S.C. 823

(g)(2)(G)(ii)(I)–(III).'' Notably, AOA board certification is specifically listed in 21 U.S.C. 823(g)(2)(G)(ii)(III), as amended by the Comprehensive Addiction and Recovery Act of 2016 (CARA), Public Law 114–198. As a result, the listing of AOAAM instead of AOA was the result of a technical error that needs to be corrected immediately.

If this error is not immediately corrected, practitioners who have received training from AOAAM, and who do not satisfy any of the other ''additional credentialing'' requirements under the final rule, may argue that they are eligible to increase their patient limit even though they do not possess the qualifications that HHS has deemed necessary to dispense or prescribe relevant medications safely and effectively at the higher patient cap. In addition, the error has resulted in SAMHSA receiving numerous questions seeking clarification regarding the credentials that osteopathic providers need to have in order to be eligible for the higher patient limit. Failure to correct this error could, therefore, significantly compromise the quality of care delivered to patients in need of MAT and could pose a substantial threat to public safety.

The technical error at issue will therefore be fixed by removing the reference to the ''American Osteopathic Academy of Addiction Medicine'' in the final rule's definition of ''additional credentialing,'' and inserting a reference to the ''American Osteopathic Association.'' It should be noted that although reference was made to ''subspecialty board certification'' by AOA in the NPRM, the term ''subspecialty'' will not be included in the final rule's definition of ''additional credentialing'' because CARA amended the Controlled Substances Act by removing the term ''subspecialty'' from the description of AOA board certification under 21 U.S.C. 823(g)(2)(G)(ii)(III). CARA was enacted on July 22, 2016, after the final rule was published on July 8, 2016. As explained in the preamble of the final rule, HHS's reason for changing the definition of ''board certification'' in the NPRM to ''additional credentialing'' in the final rule was to ensure that the training credentials described in 21 U.S.C. 823(g)(2)(G)(ii)(I)–(III) (which include AOA board certification) were included as eligible pathways for practicing at the higher patient cap. Therefore, the technical fix made to the definition of ''additional credentialing'' in the final rule reflects HHS's continuing intention to include the type of training described in 21 U.S.C. 823(g)(2)(G)(ii)(I)–(III), as amended by CARA.

List of Subjects in 42 CFR Part 8

Health professions, Methadone, Reporting and recordkeeping requirements.

Accordingly, 42 CFR part 8 is corrected by making the following correcting amendment:

PART 8—MEDICATION ASSISTED TREATMENT FOR OPIOID USE DISORDERS

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 21 U.S.C. 823; 42 U.S.C. 257a, 290bb–2a, 290aa(d), 290dd–2, 300x–23, 300x–27(a), 300y–11.

■ 2. In § 8.2, revise the definition of *Additional Credentialing* to read as follows:

§ 8.2 Definitions.

* * * * *

Additional Credentialing means board certification in addiction medicine or addiction psychiatry by the American Board of Addiction Medicine, the American Board of Medical Specialties, or the American Osteopathic Association or certification by the American Board of Addiction Medicine, or the American Society of Addiction Medicine.

* * * * *

Dated: September 2, 2016.

Wilma Robinson,

Deputy Executive Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2016–21674 Filed 9–8–16; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2015–0034; FF09M21200–167–FXMB1231099BPP0]

RIN 1018–BA70

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2016–17 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 9, 2016.

ADDRESSES: You may inspect comments received on the special hunting regulations and Tribal proposals during normal business hours at U.S. Fish and Wildlife Headquarters, 5275 Leesburg Pike, Falls Church, VA 22041–3803, or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2015–0034.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of July 3, 1918 (16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the May 27, 2016, **Federal Register** (81 FR 34226), we proposed special migratory bird hunting regulations for the 2016–17 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in

daily bag and possession limits. In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the August 6, 2015, **Federal Register** (80 FR 47388), we requested that tribes desiring special hunting regulations in the 2016–17 hunting season submit a proposal including details on:

(1) Harvest anticipated under the requested regulations;

(2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

The final rule described here is the final in the series of proposed and final rulemaking documents for Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2016–17 Season. It sets hunting seasons, hours, areas, and limits for migratory game bird species on reservations and ceded territories. This final rule is the culmination of the rulemaking process for the Tribal migratory game bird hunting seasons, which started with the August 6, 2015, proposed rule. As discussed elsewhere in this document, we proposed special migratory bird hunting regulations for the 2016–17 hunting season for certain Indian tribes, on May 27, 2016. This final rule sets the Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2016–17 Season.

Status of Populations

Information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds, including detailed information on methodologies and results, was discussed in the December 11, 2015, **Federal Register** (80 FR 77088) and is available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Comments and Issues Concerning Tribal Proposals

For the 2016–17 migratory bird hunting season, we proposed regulations for 23 Tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. We noted in the May 27 proposed rule that we were proposing seasons for seven Tribes who have submitted proposals in past years but from whom we had not yet received proposals this year. We did not receive proposals from five of those Tribes and, therefore, have not included them in this final rule. No other changes were made to this final rule.

The comment period for the May 27 proposed rule closed on June 27, 2016. We received nine comments on our May 27 proposed rule, which announced proposed seasons for migratory bird hunting by American Indian Tribes. Similar comments were combined below.

Written Comments: The Village of Hobart requested we explore Wisconsin Department of Natural Resource (WIDNR) guidelines for hunting and fishing, and consider the following: (1) Cease our Migratory Bird Program as an unnecessary and costly replication of State hunting and fishing guidelines; and/or (2) rescind section (p) of the proposed rule specific to the Oneida Nation where their tribal lands are significantly less than 10 percent of the municipal boundary. The Village also expressed concern that during the hunting season tribal members could potentially trespass on land in the Village or on/around the Austin Straubel Airport.

Service Response: We have approved of Oneida Nation's proposed regulations, or regulations similar to those proposed, since 1991. To our knowledge, this is only the second time that the Village has opposed these special migratory bird hunting regulations. Also, to our knowledge, there have been no indications of conflicts (*e.g.,* arrests for trespass, etc.) on these lands during Oneida Nation's hunting season since their inception in 1991. Similarly, we note that the Airport property is a fenced and secured facility so potential conflict is unlikely. Lastly, we disagree with the Village's assertions that the Oneida Reservation has been disestablished or diminished. Our position is consistent with the Department calling an election for the Oneida Nation under Section 18 of the Indian Reorganization Act (''IRA'') and the Department's subsequent approval of its constitution under the IRA in 1936. Most recently in May 2016, the Department's Interior Board of Indian Appeals (IBIA) reaffirmed its earlier ruling that the Oneida Nation was organized in accordance with the IRA. Dillenburg v. Midwest Regional Director, Bureau of Indian Affairs,63 IBIA 56, (2016); see also, Village of Hobart v. Acting Midwest Regional Director,57 IBIA 4, (2013). For these reasons, we have decided to finalize Oneida's regulations as proposed. We encourage both the Village and Oneida to meet with us before special tribal regulations for the 2017–18 season are proposed in early 2017 if they still have questions related to the status of Oneida reservation and treaty rights; and to address any perceived conflicts with Oneida's hunting activity.

Written Comments: We received one comment from the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) on the May 27 proposed rule. GLIFWC comments that we have maintained that confusion on the part of the public, law enforcement, and other reasons justify our denial of the tribes' proposal to use electronic calls to hunt migratory birds, and GLIFWC contends that the courts have ruled that tribal treaty rights can be limited only when and if they can be shown to be detrimental to the conservation of natural resources or represent a threat to human health and safety. GLIFWC believes that, contrary to case law, we continue to apply inappropriate constraints and an unfounded rationale in our consideration of the tribes' proposal. GLFWC gives specific examples of this from the commentary in the proposed rule, which included:

- In the discussion regarding the proposed use of electronic calls, we state, ''we do not believe that allowing the use of electronic calls . . . is in the best interest of the conservation of migratory birds.'' This statement is made without providing any evidence of the negative impacts to migratory bird resource that might be caused by the highly limited application of this technique that the tribes proposed.
- We also state that electronic calls ''are not generally considered a legitimate component of hunting.'' This is a cultural statement made through a lens that views the harvest of migratory birds as a sport activity. It has no place in the evaluation of tribal subsistence regulations (as ''legitimacy'' is an ethical consideration that is not consistent with biological impact), and this language continues to be offensive to the tribes.
- We also state that we remain very concerned that the use of electronic calls would ''lead to confusion on the

part of the public, wildlife management agencies, and law enforcement officials.'' Again, no evidence is provided to support this concern (and the fact that a wide range of tribal harvesting regulations have differed from those for State hunters for decades without ''confusion'' is overlooked). It also disregards the case law on treaty rights that ''confusion'' is not a valid reason to restrict the treaty-rights exercise, even if it should exist.

GLFWC also believes the proposed rule falls short of meeting the Service's responsibility to the tribes in other ways as well. For example, we state that the Service ''continue[s] to be concerned about the large biological uncertainty surrounding any widespread use of electronic calls,'' and yet rejected a very limited experimental application of electronic calls that could provide the very evidence needed to reduce that uncertainty. No acceptable alternative to the tribes' proposal was suggested. The Service indicated that ''discussions are ongoing'' with the tribes over various management issues; however, the Service made no effort to engage in government-to-government consultation with the tribes about the season proposal before publishing the proposed rule. Lack of government-to-government consultation on a regulation directly affecting tribal interests constitutes an agency action contravening Executive Order 13175, a memorandum to Federal agencies by President Obama reaffirming Executive Order 13175, and official policy of the Department of the Interior and the Service, and is contrary to the 2011 Service Tribal Consultation Handbook.

Notably, the Service rejected provisions regarding baiting, trapping, and hunting at night without providing any discussion, any evidence of biological or safety impacts, or making any effort to consult with the tribes on these issues—despite the recent ruling by the Seventh Circuit in the Lac Courte Oreille case and the above-mentioned Executive Order and department- and agency-level policies.

GLIFWC requests that we issue a final rule that approves the tribes' original proposal for migratory bird harvesting in the 1837 and 1842 ceded territories. If we have legitimate natural resource, or public health or safety, concerns about the tribes' proposal, the tribes would welcome the opportunity to discuss those concerns in greater detail. However, as described above, GLIFWC asserts that the justification provided in the proposed rule does not appear to support a denial of the tribes' proposal.

Service Response: The GLIFWC 2016–17 proposal has one specific proposed change from regulations approved last season: in the 1837 and 1842 Treaty Areas, the GLIFWC proposal would allow the use of electronic calls. GLIFWC's proposal also mentions developing regulations to allow for the night hunting and baiting of waterfowl, and the trapping of migratory birds. However, no specificity or development timetable is contained in their proposal. Thus, we will largely defer our response to those latter items until the appropriate time. However, we hope to continue discussions with GLIFWC in the near future on these important issues.

GLIFWC states that the specific proposed regulatory changes are intended to provide tribal members a harvest opportunity within the scope of rights reserved in their various treaties and increase tribal subsistence harvest opportunities, while protecting migratory bird populations. Under the GLIFWC's proposed regulations, GLIFWC expects total ceded territory harvest to be approximately 1,650 ducks, 375 geese, 20 sandhill cranes, and 20 swans, which is roughly similar to anticipated levels in previous years for those species for which seasons were established. GLIFWC further anticipates that tribal harvest will remain low given the small number of tribal hunters and the limited opportunity to harvest more than a small number of birds on most hunting trips.

Recent GLIFWC harvest surveys (1996–98, 2001, 2004, 2007–08, 2011, and 2012) indicate that tribal off-reservation waterfowl harvest has averaged fewer than 1,100 ducks and 250 geese annually. Two sandhill cranes were reported harvested in each of the first three tribal crane seasons (2014–16). In the latest survey year for which we have specific results (2012), an estimated 86 hunters took an estimated 1,090 trips and harvested 1,799 ducks (1.7 ducks per trip) and 822 geese. Analysis of hunter survey data over 1996–2012 indicates a general downward trend in both harvest and hunter participation. We note that GLIFWC also mentions a 2015 hunter survey that has not yet been completed.

GLIFWC cites *United States* v. *Bresette* (D.Minn. 1991) and *Lac Courte Oreilles Band of Lake Superior Chippewa Indians* v. *Wisconsin* (7th Cir. 2014) as cases that the Migratory Bird Treaty Act (MBTA) does not abrogate their treaty rights, and that the Service should permit the use of electronic calls, baiting, night hunting, and trapping as they have either specifically proposed this year (electronic calls) or have proposed developing regulations allowing for future implementation (baiting, night hunting, and trapping). While we agree that the MBTA does not abrogate the tribe's treaty rights, we disagree with GLIFWC's conclusion that the tribe is therefore entitled to use electronic calls, baiting, night hunting, and trapping. We still retain the authority to reasonably regulate the manner of take for migratory bird hunting on ceded lands. For example, the *Bresette* case involved a defense to a criminal prosecution and did not address the issue of the manner in which tribal members were permitted to take birds.

Similarly in the *Lac Courte Oreilles* case, the 7th Circuit required the State of Wisconsin to justify its rationale for safety concerns prohibiting the night hunting of deer when other surrounding States allowed for deer night hunting. We believe this case is distinguishable in that no night waterfowl hunting is currently allowed anywhere, nor has it ever been allowed in the past. Further, night deer hunting uses spotlights that enable hunters to specifically identify intended targets. Waterfowl are much smaller targets than deer, and hunters should be required to reasonably identify their target to avoid the unintentional take of non-game species. Shooting at night makes target identification impractical and would significantly increase the potential take of non-game and other protected birds, including the potential take of threatened and endangered species.

In addition to conservation concerns relating to the unintentional take of protected species, we have also continually cited significant safety concerns related to migratory bird hunting outside of the normal allowed shooting hours. Normally, shooting hours for migratory game birds are one-half hour before sunrise to sunset. Potential impacts to hunter safety, difficulty of identifying birds, retrieval of downed birds, and impacts on law enforcement are some of the concerns we have raised when discussing potential expansions of shooting hours. In 2012, in deference to tribal traditions and in the interest of cooperation, and in spite of our previously identified concerns regarding species identification, retrieval of downed birds, hunter safety, and law enforcement impacts, we approved shooting 30 minutes after sunset (an extension of 15 minutes from the then-current 15 minutes after sunset) (77 FR 54451, September 5, 2012). This was consistent with other Tribes in the general area (Fond du Lac, Leech Lake, Oneida, Sault Ste Marie, and White Earth). However, we stated in 2014 (79 FR 52226, September 3, 2014) that any further extension of shooting hours on either the front end or the back end of the day would be contrary to public safety and would only heighten our previously identified safety and conservation concerns. We are unaware of any other migratory bird hunting that occurs more than 30 minutes after sunset. Thus, we conclude that for safety and conservation concerns, it is appropriate for us to deny GLIFWC's proposed request to develop regulations allowing the night hunting of waterfowl.

Regarding GLIWFC's request to develop regulations allowing the baiting of waterfowl and the trapping of migratory birds, as we noted above, the lack of specificity or a development timetable in their proposal makes this request difficult to adequately respond to at this time. We do not believe that a large-scale discussion of the merits and practicality, or lack thereof, of such practices is appropriate at this time, but would rather have further discussions with GLIFWC on these issues. Thus, we will defer our response to these items until such appropriate time. Further discussion on allowing the use of electronic calls is contained below.

Allowing Electronic Calls

As we have stated the last 5 years (76 FR 54676, September 1, 2011; 77 FR 54451, September 5, 2012; 78 FR 53218, August 28, 2013; 79 FR 52226, September 3, 2014; 80 FR 52663, September 1, 2015), the issue of allowing electronic calls and other electronic devices for migratory game bird hunting has been highly debated and highly controversial over the last 40 years, similar to other prohibited hunting methods such as baiting. Electronic calls, *i.e.,* the use or aid of recorded or electronic amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds to lure or attract migratory game birds to hunters, was Federally prohibited in 1957, because of their effectiveness in attracting and aiding the harvest of ducks and geese and are generally not considered a legitimate component of hunting. In 1999, after much debate, the migratory bird regulations were revised to allow the use of electronic calls for the take of light geese (lesser snow geese and Ross geese) during a light-goose-only season when all other waterfowl and crane hunting seasons, excluding falconry, were closed (64 FR 7507, February 16, 1999; 64 FR 71236, December 20, 1999; 73 FR 65926, November 5, 2008). The regulations were also changed in 2006, to allow the use of electronic calls for the take of resident Canada geese during Canada-goose-only September seasons when all other waterfowl and crane seasons, excluding falconry, were closed (71 FR 45964, August 10, 2006). In both instances, these changes were made in order to significantly increase the take of these species due to serious population overabundance, habitat degradation due to high populations, depredation issues, or public health and safety issues, or a combination of these.

In our previous responses on this issue, we discussed available information from the use of electronic calls during the special light-goose seasons its applicability to most waterfowl species. We have also provided information to GLIWFC regarding the availability of using electronic calls for resident Canada geese in early-September or during special light-goose seasons when all other waterfowl seasons are closed. To our knowledge, GLIFWC members have not utilized electronic calls during either the special light-goose season or the early-September resident Canada goose season. We note that these opportunities would seem to provide a perfect opportunity to gauge not only hunter interest and participation, but the effectiveness of the methodology.

Further, given available evidence on the effectiveness of electronic calls, we continue to be concerned about the large biological uncertainty surrounding any widespread use of electronic calls. The Treaty areas of Michigan, Minnesota, and Wisconsin covered by GLIWFC's proposal are a large area subject to widely varying degrees of hunting pressure. These factors logically lead us to a large degree of uncertainty surrounding any widespread use of electronic calls in such an area.

Additionally, we remained concerned that tribal waterfowl hunting covered by GLIFWC's proposal would occur on ceded lands that are not in the ownership of the Tribes. We continue to believe that the use of electronic calls to take waterfowl would likely lead to significantly increased confusion on the part of the public, wildlife-management agencies, and law-enforcement officials in implementing the requirements of 50 CFR part 20. Further, similar to the impacts of baiting, uncertainties concerning the zone of influence attributed to the use of electronic calls could potentially increase harvest from nontribal hunters operating within areas electronic calls are being used during the dates of the general hunt.

Lastly, and perhaps most importantly, GLIFWC has repeatedly stated that tribal hunter participation is low, and that the proposals for electronic calls are intended to increase migratory bird hunting participation and harvest by tribal members. While we also have concerns over hunter-participation numbers and a common desire to increase hunter recruitment and retention of not only tribal hunters but migratory bird sport hunters, GLIFWC has not defined these goals nor presented any evidence that their proposals would help achieve this intended goal. Further, GLIWFC has provided no evidence or data that tribal migratory bird hunting has increased because of recently proposed and implemented harvest liberalizations over the past few years (increased bag limits; removal of species restrictions; increased shooting hours; longer seasons; implementation of tundra swan, sandhill crane, and dove seasons; removal of possession limits; and removal of shot-shell limits); nor any evidence that the cause of low tribal hunter interest in hunting migratory birds is due to restrictive harvest regulations. Likewise, GLIFWC has not shown that they have utilized electronic calls for existing goose seasons where they may be used (discussed above) in an effort to increase hunter interest, participation, and harvest.

Many State and Federal wildlife agencies, as well as other nongovernmental organizations, have devoted considerable resources to the topic of hunter recruitment and retention. However, the most recent research indicates that changes in hunting regulations are not very effective in recruiting hunters. Thus, given this research information and the lack of evidence that GLIFWC's proposals will help achieve their stated objective, we cannot justify the acceptance of the inherent risks to migratory bird conservation associated with this proposal at this time. However, we would be glad to review any data or information GLIWFC may have that would help address these concerns and we would welcome opportunities to work with GLIFWC on our common desire to increase hunter recruitment and retention.

Notwithstanding our concerns, we understand GLIFWC's position on this issue, their desire to increase tribal hunter opportunity, harvest, and participation, and the importance that GLIFWC has ascribed to these issues. In our recent discussions with them over the past year or more, they have expressed a willingness to work with us to further discuss these issues, all the uncertainties and difficulties surrounding them, and the overall Federal-Tribal process for addressing these and other such issues. As a first step in this process, we have begun work on a memorandum of understanding that further defines and clarifies the overall process, the administrative roles and responsibilities, and the communications process between us. However, this process is only the first step and we are not yet at a point in these discussions that would allow our approval of this proposal, or any such proposal. Further, it would be premature at this time to approve such a measure, or any such measure, until we finalize the Federal-Tribal process, roles, and responsibilities for addressing this and other such issues. It is our hope that over the next year, we can continue these discussions. We remain hopeful that we can reach a mutually agreeable resolution.

Thus, at this time, removal of the electronic-call prohibition, even with the GLIFWC's proposed limited and experimental design, would be inconsistent with our long-standing conservation concerns, and we do not support allowing the use of electronic calls in the 1837 and 1842 Treaty Areas for any open waterfowl season

Written Comments: The Wisconsin Department of Natural Resources (WIDNR) and the Mississippi Flyway Council (MFC) expressed opposition to GLIFWC's proposal allowing the use of electronic calls, night hunting and baiting for waterfowl, and the trapping of migratory birds. Both expressed continued concerns about the potential negative impacts to local waterbird populations, the increased potential for take of nongame species, the incompatibility with Federal and State waterfowl management, public safety, potential user conflicts, law-enforcement problems, and the potential to place non-tribal hunters in violation of migratory game bird hunting regulations. Both further questioned GLIFWC's justification for proposed additional hunting methods to achieve an objective of increased migratory-bird-hunting participation by tribal members in the absence of evidence. However, the MFC welcomed opportunities to work with GLIFWC on their common desire to increase hunter recruitment and retention.

Service Response: We agree with the MFC and the WIDNR about continuing concerns over declining hunter participation and our common desire to increase hunter recruitment and retention of not only tribal hunters but migratory bird sport hunters. Many State and Federal wildlife agencies, as well as other nongovernmental organizations, have devoted considerable resources to this topic. However, we agree with the MFC that the most recent research indicates that changes in hunting regulations are not very effective in recruiting hunters.

As we stated earlier, GLIFWC has repeatedly stated that tribal participation is low, but presents no evidence that tribal migratory bird hunting has increased because of recent liberalizations over the past few years, nor that tribal members have stated that restrictive regulations are the cause of low tribal hunter interest in hunting migratory birds. Given the lack of evidence that GLIFWC's proposals will help achieve their stated objective, we agree that there is no justification to accept the inherent risks to migratory bird conservation and public safety associated with GLIFWC's proposals. However, like the MFC, we would welcome opportunities to work with GLIFWC on our common desire to increase hunter recruitment and retention.

Written Comments: Three commenters protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and the status and habitat data on which the migratory bird hunting regulations are based. Two commenters believed certain migratory bird species such as sandhill cranes, woodcock, and mourning doves should not ever be hunted.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Further, there exists a long history of establishing hunting seasons for migratory game bird species such as waterfowl, cranes, woodcock, doves, and migratory shore and upland game birds. Tribes, such as those included in this final rule, have hunted these species before and since the inception of our establishment of migratory game bird hunting seasons. These seasons are culturally important to them, and applicable treaties allow for hunting of these species.

Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, we believe that the hunting seasons provided for herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. We continue to believe that the current Flyway-Council system of migratory bird management is one of the most longstanding, successful examples of State–Federal cooperative management since its establishment in 1952. Likewise, the establishment of special tribal migratory bird hunting regulations has been a successful Federal-Tribal partnership since 1988. However, as always, we continue to seek new ways to improve the process.

National Environmental Policy Act (NEPA)

The programmatic document, "Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139)," filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being "Duck Hunting Regulations for 2016–17," with its corresponding January 2016 finding of no significant impact. In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An updated economic analysis was prepared for the 2013–14 season. This analysis was based on data from the newly released 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives were: (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. For the 2016–17 season, we have also chosen alternative 3. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, the 2012–13, the 2014–15, and the 2015–16 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2015–0034.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the person listed under **FOR FURTHER INFORMATION CONTACT**, from our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2015–0034.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 5/31/2018).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the August 6, 2015, **Federal Register** (80 FR 47388), we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2016–17 migratory bird hunting season. The resulting proposals were contained in a separate May 27, 2016, proposed rule (81 FR 34226). By virtue of these actions, we have consulted with affected Tribes.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulation Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, Tribes would have insufficient time to publicize the necessary regulations and procedures to their hunters. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this rule will, therefore, take effect immediately upon publication.

Accordingly, with each participating Tribe having had an opportunity to participate in selecting the hunting seasons desired for its reservation or ceded territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—MIGRATORY BIRD HUNTING

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

Unless specifically provided for below, all of the regulations contained in 50 CFR part 20 apply to the seasons listed herein.

(a) [Reserved.]

(b) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters).*

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2016, through March 9, 2017.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (Including Mergansers)

Season Dates: Open October 1, 2016, through January 8, 2017, and open January 14 through 18, 2017.

Scaup

Season Dates: Open October 1 through December 25, 2016.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, three scaup (when open), two canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 25, respectively.

Geese

Dark Geese

Season Dates: Open October 1, 2016, through January 8, 2017, and open January 14 through 18, 2017.

Daily Bag and Possession Limits: 4 and 12, respectively.

Light Geese

Season Dates: Same as for dark geese.

Daily Bag and Possession Limits: 20 and 60, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are one-half hour before sunrise to one-half hour after sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) *Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).*

Ducks

1854 and 1837 Ceded Territories

Season Dates: Begin September 10 and end November 30, 2016.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 9 black ducks, 9 scaup, 9 wood ducks, 9 redheads, 9 pintails, and 9 canvasbacks.

Reservation

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 6 black ducks, 6 scaup, 6 redheads, 6 pintails, 6 wood ducks, and 6 canvasbacks.

Mergansers

1854 and 1837 Ceded Territories

Season Dates: Begin September 10 and end November 30, 2016.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

Reservation

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese

1854 and 1837 Ceded Territories

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: 20 geese.

Reservation

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules)

1854 and 1837 Ceded Territories

Season Dates: Begin September 10 and end November 30, 2016.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Reservation

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sandhill Cranes: 1854 and 1837 Ceded Territories

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: Two sandhill cranes. Crane carcass tags are required prior to hunting.

Sora and Virginia Rails

All Areas

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe

All Areas

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: Eight common snipe.

Woodcock

All Areas

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: Three woodcock.

Mourning Doves

All Areas

Season Dates: Begin September 1 and end November 30, 2016.

Daily Bag Limit: 30 mourning doves.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits for migratory birds. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) *Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).*

Ducks

Season Dates: Open September 1, 2016, through January 15, 2017.

Daily Bag Limit: 25 ducks, which may include no more than 6 pintail, 4 canvasback, 6 black ducks, 1 hooded merganser, 6 wood ducks, 5 redheads, and 12 mallards (only 6 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limit: 10 geese.

Other Geese (White-Fronted Geese and Brant)

Season Dates: Open September 20 through December 30, 2016.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1 through November 14, 2016.

Daily Bag Limit: 10 rails, 10 snipe, and 5 woodcock.

Mourning Doves

Season Dates: Open September 1 through November 14, 2016.

Daily Bag Limit: 10 mourning doves.

Sandhill Crane

Season Dates: Open September 1 through November 14, 2016.

Daily Bag Limit: Two sandhill crane, with a season limit of six.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

The 2016–17 waterfowl hunting season regulations apply to all treaty areas (except where noted):

Ducks

Season Dates: Begin September 1 and end December 31, 2016.

Daily Bag Limit: 50 ducks in the 1837 and 1842 Treaty Area; 30 ducks in the 1836 Treaty Area.

Mergansers

Season Dates: Begin September 1 and end December 31, 2016.

Daily Bag Limit: 10 mergansers.

Geese

Season Dates: Begin September 1 and end December 31, 2016. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 1 and end December 31, 2016.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Begin September 1 and end December 31, 2016.

Daily Bag and Possession Limits: 20, singly, or in the aggregate, 25.

Common Snipe

Season Dates: Begin September 1 and end December 31, 2016.

Daily Bag Limit: 16 common snipe.

Woodcock

Season Dates: Begin September 6 and end December 31, 2016.

Daily Bag Limit: 10 woodcock.

Mourning Dove

1837 and 1842 Ceded Territories Only

Season Dates: Begin September 1 and end November 29, 2016.

Daily Bag Limit: 15 mourning doves.

Sandhill Cranes

1837 and 1842 Ceded Territories Only

Season Dates: Begin September 1 and end December 31, 2016.

Daily Bag Limit: 2 cranes.

Swans

1837 and 1842 Ceded Territories Only

Season Dates: Begin November 1 and end December 31, 2016.

Daily Bag Limit: 2 swans. All harvested swans must be registered by presenting the fully-feathered carcass to a tribal registration station or GLIFWC warden. If the total number of trumpeter swans harvested reaches 10, the swan season will be closed by emergency tribal rule.

General Conditions

A. All tribal members are required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members are required to comply with tribal codes that are no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations.

C. Particular regulations of note include:

1. Nontoxic shot is required for all waterfowl hunting by tribal members.

2. Tribal members in each zone must comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. There are no possession limits, with the exception of 2 swans (in the aggregate) and 25 rails (in the aggregate). For purposes of enforcing bag limits, all migratory birds in the possession and custody of tribal members on ceded lands are considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands do not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective section 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for nontribal members as published at 64 FR 29799, June 3, 1999.

5. There are no shell limit restrictions.

6. Hunting hours are from 30 minutes before sunrise to 30 minutes after sunset.

(f) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).*

Ducks (Including Mergansers)

Season Dates: Open October 8 through November 30, 2016.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, two pintail, two redheads, two canvasback, and three scaup. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 8 through November 30, 2016.

Daily Bag and Possession Limits: Two and six, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(g) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).*

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 10 through September 11, 2016; open September 17 through September 18, 2016; and open October 1, 2016, through January 20, 2017. During these period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Ducks

Season Dates: Open September 24, 2016, through January 8, 2017.

Scaup

Season Dates: Open September 24, 2016, through December 18, 2017.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup (when open), and 2 redheads. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open October 10, 2016, through January 31, 2017.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 10, 2016, through January 31, 2017.

Daily Bag Limit: 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(h) [Reserved.]

(i) *Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).*

Ducks

Season Dates: Open September 17 through December 31, 2016.

Daily Bag Limits: 10 ducks, including no more than 5 pintail, 5 canvasback, and 5 black ducks.

Geese

Season Dates: Open September 1 through December 31, 2016.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(j) *Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).*

1836 Ceded Territory and Tribal Reservation:

Ducks

Season Dates: Open September 9, 2016, through January 22, 2017.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (2 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Canada Geese

Season Dates: Open September 1, 2016, through February 5, 2017.

Daily Bag Limit: Five.

White-fronted Geese, Brant, and Snow Geese

Season Dates: Open September 7 through December 4, 2016.

Daily Bag Limit: Five.

Woodcock, Mourning Doves, Snipe, and Sora and Virginia Rails

Season Dates: Open September 1 through November 13, 2016.

Daily Bag Limit: 5 woodcock and 10 each of the other species.

General conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2016–17 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20. Shooting hours will be from one-half hour before sunrise to sunset.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

E. Possession limits are twice the daily bag limits.

(k) *The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).*

Ducks

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limits: 20 ducks, including no more than 5 hen mallards, 5 black ducks, 5 redheads, 5 wood ducks, 5 pintail, 5 scaup, and 5 canvasback.

Mergansers

Season Dates: Open September 15, 2016, through January 31, 2017.

Daily Bag Limits: 10 mergansers, including no more than 5 hooded mergansers.

Coots and Gallinules

Season Dates: Open September 15 through December 31, 2016.

Daily Bag Limit: 20.

Canada Geese

Season Dates: Open September 1, 2016, through February 8, 2017.

Daily Bag Limit: 20 in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1 through December 31, 2016.

Daily Bag Limit: 20.

Snipe

Season Dates: Open September 1 through December 31, 2016.

Daily Bag Limit: 16.

Mourning Doves

Season Dates: Open September 1 through November 14, 2016.

Daily Bag Limit: 15.

Woodcock

Season Dates: Open September 1 through December 1, 2016.

Daily Bag Limit: 10.

Sandhill Cranes

Season Dates: Open September 1 through December 1, 2016.

Daily Bag Limit: 1.

General: Possession limits are twice the daily bag limits.

(l) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).*

Tribal Members

Ducks, Mergansers, and Coots

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: Six ducks, including no more than two hen mallard and five mallards total, two pintail, two redheads, two canvasback, three wood ducks, three scaup, two bonus teal during the first 16 days of the season, and one mottled duck Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: 6 and 18, respectively.

White-Fronted Geese

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag Limit: 20.

Nontribal Hunters

Ducks (Including Mergansers and Coots)

Season Dates: Open October 8, 2016, through January 12, 2017.

Daily Bag and Possession Limits: Six ducks, including five mallards (no more of which can be two hen mallard), three scaup, two canvasback, two redheads, three wood ducks, one mottled duck, and two pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 29, 2016, through February 12, 2017.

Daily Bag and Possession Limits: 6 and 18, respectively.

White-Fronted Geese

Season Dates: Open October 29, 2016, through January 24, 2017.

Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open October 29, 2016, through February 12, 2017.

Daily Bag and Possession Limits: 50 and no possession limit.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot and shooting hours. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

(m) [Reserved.]

(n) *Makah Indian Tribe, Neah Bay, Washington (Tribal Members).*

Band-Tailed Pigeons

Season Dates: Open September 17 through October 23, 2016.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 24, 2016, through January 29, 2017.

Daily Bag Limit: Seven ducks including no more than five mallards (only two of which can be a hen), one redhead, one pintail, three scaup, and one canvasback. The seasons on wood duck and harlequin are closed. The coot daily bag limit is 25.

Geese

Season Dates: Open September 24, 2016, through January 29, 2017.

Daily Bag Limit: Four, including no more than one brant. The seasons on Aleutian and dusky Canada geese are closed.

General Conditions

All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:

1. As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area.
2. Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl.
3. The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation.
4. The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.
5. Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited.
6. The use of dogs is permitted to hunt waterfowl.
7. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.
8. Open hunting areas are: GMUs 601 (Hoko), a portion of the 602 (Dickey) encompassing the area north of a line between Norwegian Memorial and east to Highway 101, and 603 (Pysht).

(o) *Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).*

Band-Tailed Pigeons

Season Dates: Open September 1 through September 30, 2016.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1 through September 30, 2016.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers and Coots)

Season Dates: Open September 24, 2016, through January 8, 2017.

Scaup

Season Dates: Open September 24 through December 18, 2016.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one mottled duck, two canvasback, three scaup (when open), two redheads, and two pintail. Coot daily bag limit is 25. Merganser daily bag limit is seven. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 24, 2016, through January 8, 2017.

Daily Bag and Possession Limits: 4 and 12, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(p) *Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).*

Ducks (Including Mergansers)

Season Dates: Open September 17 through December 4, 2016.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1 through December 31, 2016.

Daily Bag and Possession Limits: 5 Canada geese with a possession limit of 10. A seasonal quota of 500 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 3 through November 6, 2016.

Daily Bag and Possession Limits: Two and four woodcock, respectively.

Doves

Season Dates: Open September 3 through November 6, 2016.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits, which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(q) *Point No Point Treaty Council, Kingston, Washington (Tribal Members Only).*

Jamestown S'Klallam Tribe

Ducks

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scoters, and two redheads. Possession limit is twice the daily bag limit. Bag and possession limits for harlequin ducks is one per season.

Geese

Season Dates: Open September 9, 2016, through March 10, 2017.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on dusky Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 10 through January 25, 2017.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 13, 2016, through February 1, 2017.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 13, 2016, through January 18, 2017.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 13, 2016, through March 10, 2017.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 13, 2016, through January 18, 2017.

Daily Bag and Possession Limits: Two and four pigeons, respectively.

Port Gamble S'Klallam Tribe

Ducks

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scoters, and two redheads. Possession limit is twice the daily bag limit. Bag and possession limits for harlequin ducks is one per season.

Geese

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on dusky Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 9, 2016, through January 31, 2017.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: 7 and 14 coots, respectively.

Mourning Doves

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: Two and four pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Point No Point Tribal Council pursuant to tribal law. Hunting hours are from one-half hour before sunrise to sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(r) *The Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Mt. Pleasant, Michigan (Tribal Members Only)*

Mourning Doves

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limit: 25 doves.

Ducks

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limits: 20, including no more than 5 hen mallard, 5 wood duck, 5 black duck, 5 pintail, 5 redhead, 5 scaup, and 5 canvasback.

Mergansers

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limit: 10, including no more than 5 hooded mergansers.

Canada Geese

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limit: 20 in the aggregate.

Woodcock

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limits: 10.

Common Snipe

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limits: 20 in the aggregate.

Sandhill Crane

Season Dates: Open September 1, 2016, through January 31, 2017.

Daily Bag Limits: One.

General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(s) *Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1 through November 14, 2016.

Daily Bag Limit: 10 doves.

Teal

Season Dates: Open September 1 through December 31, 2016.

Daily Bag Limits: 20 in the aggregate

Ducks

Season Dates: Open September 15 through December 31, 2016.

Daily Bag Limits: 20, including no more than 10 mallards (only 5 of which may be hens), 5 canvasback, 5 black duck, and 5 wood duck.

Mergansers

Season Dates: Open September 15 through December 31, 2016.

Daily Bag Limit: 10 in the aggregate.

Geese

Season Dates: Open September 1 through December 31, 2016.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1 through December 31, 2016.

Daily Bag Limit: 20 in the aggregate.

Woodcock

Season Dates: Open September 2 through December 1, 2016.

Daily Bag Limits: 10.

Common Snipe

Season Dates: Open September 15 through December 31, 2016.

Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1 through December 31, 2016.

Daily Bag Limits: 20 in the aggregate.

General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(t) *Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).*

Ducks, Including Scaup

Duck Season Dates: Open October 8, 2016, through January 20, 2017.

Scaup Season Dates: Open October 8, 2016, through January 1, 2017.

Daily Bag and Possession Limits: Seven ducks and mergansers, including no more than two hen mallards, two pintail, three scaup, two canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots. The possession limit is three times the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 24 snipe, respectively.

Canada Geese

Season Dates: Open October 8, 2016, through January 20, 2017.

Daily Bag and Possession Limits: 4 and 12, respectively.

White-Fronted Geese

Season Dates: Open October 8, 2016, through January 20, 2017.

Daily Bag and Possession Limits: 10 and 30, respectively.

Light Geese

Season Dates: Open October 8, 2016, through January 20, 2017.

Daily Bag and Possession Limits: 20 and 60, respectively

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone–Bannock Tribes also apply on the reservation.

(u) [Reserved.]

(v) *Spokane Tribe of Indians, Spokane Indian Reservation and Ceded Lands, Wellpinit, Washington (Tribal Members Only).*

Ducks

Season Dates: Open September 2, 2016, through January 31, 2017.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, two canvasback, three scaup, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 2, 2016, through January 31, 2017.

Daily Bag and Possession Limits: Four dark geese and six light geese. Possession limit is twice the daily bag limit.

General Conditions: All tribal hunters must have a valid Tribal identification card on his or her person while hunting. Shooting hours are one-half hour before sunrise to sunset, and steel shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(w) [Reserved.]

(x) *Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).*

Common Snipe

Season Dates: Open October 1, 2016, through January 31, 2017.

Daily Bag and Possession Limits: 10 and 30, respectively.

Ducks

Season Dates: Open October 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: 10 ducks. The possession limit is three times the daily bag limit.

Coots

Season Dates: Open October 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: 25 coots. The possession limit is three times the daily bag limit.

Geese

Season Dates: Open October 1, 2016, through March 10, 2017.

Daily Bag and Possession Limits: 6 and 18, respectively. The season on brant is closed.

General Conditions: Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(y) *Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only).* Ceded Territory and Swinomish Reservation

Ducks and Mergansers

Season Dates: Open September 1, 2016, through March 9, 2017.

Daily Bag and Possession Limits: 20 and 40, respectively.

Canada Geese

Season Dates: Open September 1, 2016, through March 9, 2017.

Daily Bag and Possession Limits: 10 and 20 geese, respectively.

Brant

Season Dates: Open September 1, 2016, through March 9, 2017.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

Coots

Season Dates: Open September 1, 2016, through March 9, 2017.

Daily Bag and Possession Limits: 25 and 75 coots, respectively.

Mourning Dove

Season Dates: Open September 1, 2016, through March 9, 2017.

Daily Bag and Possession Limits: 15 and 30 mourning dove, respectively.

Band-Tailed Pigeon

Season Dates: Open September 1, 2016, through March 9, 2017.

Daily Bag and Possession Limits: Three and six band-tailed pigeon, respectively.

(z) *The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members Only).*

Ducks and Mergansers

Season Dates: Open September 1, 2016, through February 28, 2017.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, two canvasback, three scaup, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2016, through February 28, 2017.

Daily Bag and Possession Limits: Seven geese, including no more than four cackling and dusky Canada geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, 2016, through February 28, 2017.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2016, through February 28, 2017.

Daily Bag and Possession Limits: 25 and 25 coots, respectively.

Snipe

Season Dates: Open September 1, 2016, through February 28, 2017.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: All tribal hunters must have a valid Tribal identification card on his or her person while hunting. All nontribal hunters must obtain and possess while hunting a valid Tulalip Tribe hunting permit and be accompanied by a Tulalip Tribal member. Shooting hours are one-half hour before sunrise to sunset, and steel shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(aa) *Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1 through December 31, 2016.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Ducks

Season Dates: Open October 1, 2016, through February 28, 2017.

Daily Bag and Possession Limits: 15 and 20, respectively.

Coots

Season Dates: Open October 1, 2016, through February 15, 2017.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open October 1, 2016, through February 28, 2017.

Daily Bag and Possession Limits: 7 and 10 geese, respectively.

Brant

Season Dates: Open November 1 through 10, 2016.

Daily Bag and Possession Limits: Two and two, respectively.

General Conditions: Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

(bb) *Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).*

Teal

Season Dates: Open October 10, 2016, through February 18, 2017.

Daily Bag Limits: 10 teal.

Ducks

Season Dates: Open October 10, 2016, through February 18, 2017.

Daily Bag Limits: Six ducks, including no more than four hen mallards, six black ducks, four mottled ducks, one fulvous whistling duck, four mergansers, three scaup, two hooded merganser, three wood ducks, one canvasback, two redheads, and two pintail. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 3, 2016, through February 18, 2017.

Daily Bag Limits: Seven ducks including no more than four of any one species (only one of which may be a hen eider).

Woodcock

Season Dates: Open October 10 through November 26, 2016.

Daily Bag Limits: Three woodcock.

Canada Geese

Season Dates: Open September 1 through 17, 2016, and open October 24, 2016, through February 18, 2017.

Daily Bag Limits: Eight Canada geese.

Snow Geese

Season Dates: Open September 1 through 17, 2016, and open November 21, 2016, through February 20, 2017.

Daily Bag Limits: 15 snow geese.

Sora and Virginia Rails

Season Dates: Open September 1 through November 5, 2016.

Daily Bag Limits: 5 sora and 10 Virginia rails.

Snipe

Season Dates: Open September 1 through December 8, 2016.

Daily Bag Limits: Eight snipe.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(cc) *White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).*

Ducks

Season Dates: Open September 10 through December 18, 2016.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 female mallards, 1 pintail, and 1 canvasback.

Mergansers

Season Dates: Open September 10 through December 18, 2016.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1 through December 15, 2016.

Daily Bag Limit: 12 geese through September 23, and 5 thereafter.

Coots

Season Dates: Open September 1 through November 30, 2016.

Daily Bag Limit: 20 coots.

Snipe

Season Dates: Open September 1 through November 30, 2016.

Daily Bag Limit: 10 snipe.

Mourning Dove

Season Dates: Open September 1 through November 30, 2016.

Daily Bag Limit: 25 mourning dove.

Woodcock

Season Dates: Open September 1 through November 30, 2016.

Daily Bag Limit: 10 woodcock.

Rail

Season Dates: Open September 1 through November 30, 2016.

Daily Bag Limit: 25 rail.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(dd) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).*

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1 through 15, 2016.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1 through 15, 2016.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks and Mergansers

Season Dates: Open October 15, 2016, through January 29, 2017.

Scaup

Season Dates: Open November 5, 2016, through January 29, 2017.

Daily Bag Limits: Seven including no more than two redheads, two pintail, three scaup (when open), seven mallards (including no more than two hen mallards), and two canvasback. Possession Limits: Twice the daily bag limit.

Coots

Season Dates: Open October 15, 2016, through January 29, 2017.

Daily Bag and Possession Limits: 25 and 50, respectively.

Canada Geese

Season Dates: Open October 15, 2016, through January 29, 2017.

Daily Bag and Possession Limits: Three and six Canada geese, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

Dated: August 31, 2016.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–21739 Filed 9–8–16; 8:45 am]

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Proposed Rules

Federal Register
Vol. 81, No. 175
Friday, September 9, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AP66

Diseases Associated With Exposure to Contaminants in the Water Supply at Camp Lejeune

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations relating to presumptive service connection to add certain diseases associated with contaminants present in the base water supply at U.S. Marine Corps Base Camp Lejeune (Camp Lejeune), North Carolina, from August 1, 1953 to December 31, 1987. The chemical compounds involved have been associated by various scientific organizations with the development of certain diseases. This proposed rule would establish that veterans, former reservists, and former National Guard members, who served at Camp Lejeune for no less than 30 days (consecutive or nonconsecutive) during this period, and who have been diagnosed with any of eight associated diseases, are presumed to have a service-connected disability for purposes of entitlement to VA benefits. In addition, VA proposes to establish a presumption that these individuals were disabled during the relevant period of service, thus establishing active military service for benefit purposes. Under this proposed presumption, affected former reservists and National Guard members would have veteran status for purposes of entitlement to some VA benefits. This proposed amendment would implement a decision by the Secretary of Veterans Affairs that service connection on a presumptive basis is warranted for claimants who served at Camp Lejeune during the relevant period and for the requisite amount of time and later develop certain diseases. The Secretary's decision is supported by the conclusions of internationally recognized scientific authorities that strong evidence exists establishing a relationship between exposure to certain volatile organic compounds (VOCs) that were in the water at Camp Lejeune and later development of certain disabilities.

DATES: *Comment Date:* Comments must be received on or before October 11, 2016.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AP66—Diseases Associated with Exposure to Contaminants in the Water Supply at Camp Lejeune." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eric Mandle, Policy Analyst, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

In the early 1980s, in response to new Environmental Protection Agency standards, the Marine Corps monitored its water quality for volatile organic compounds (VOCs). In 1982, the Marine Corps discovered elevated levels of the VOCs trichloroethylene (TCE), a metal degreaser, and perchloroethylene (PCE), a dry cleaning agent, in two of the eight on-base water supply systems at Camp Lejeune. U.S. General Accounting Office, Defense Health Care: Activities Related to Past Drinking Water Contamination at Marine Corps Base Camp Lejeune (2007) (GAO 2007). Subsequent investigations found that the main source of TCE contamination was on-base industrial activities, while the main source of PCE was an off-base dry cleaning facility. *Id.* Benzene and vinyl chloride were also found in the water supply systems. Committee on Contaminated Drinking Water at Camp Lejeune; National Research Council, *Contaminated Water Supplies at Camp Lejeune, Assessing Potential Health Effects* 4 (National Academies Press, 2009) (NRC 2009). These water systems served housing, administrative, and recreational facilities, as well as the base hospital. GAO 2007. The contaminated wells supplying the water systems were shut down by February 1985. *Id.*

Although the Agency for Toxic Substances and Disease Registry (ATSDR), an agency of the Department of Health and Human Services, conducted an initial Public Health Assessment of Camp Lejeune in 1997, additional information led ATSDR to conduct a number of follow-up studies focused on a variety of specific aspects of potential exposure and their implications for specific health endpoints (see: *http://www.atsdr.cdc.gov/sites/lejeune/activities.html*). Potentially exposed individuals who served at Camp Lejeune are encouraged to participate in a registry to receive information from new health-related scientific studies initiated by the Navy. *See Camp Lejeune Historic Drinking Water,* U.S. Marine Corps, *https://clnr.hqi.usmc.mil/clwater/Home.aspx* (last visited Aug. 12, 2016).

II. Scientific Evidence and VA's Presumptive Analysis

A. The National Research Council Review of 2009

Based on a congressional mandate in section 318 of Public Law 109–364, the Navy requested that the National Research Council (NRC) undertake a study to assess the potential long-term health effects for individuals who served at Camp Lejeune during the period of water contamination. In generating its 2009 report, "*Contaminated Water Supplies at Camp Lejeune, Assessing Potential Health Effects*", the NRC evaluated scientific studies regarding the potential health conditions associated with TCE, PCE, and other VOCs. NRC 2009 at 5. NRC also examined information relating to exposures at Camp Lejeune, including research conducted by ATSDR. *Id.* at 195.

The NRC categorized fourteen health conditions that have limited/suggestive evidence of an association with TCE, PCE, or a solvent mixture. *Id.* at 8. Limited/suggestive evidence of an association was defined as: "[e]vidence from available studies suggests an association between exposure to a specific agent and a specific health outcome in human studies, *but the body of evidence is limited by the inability to rule out chance and bias, including confounding, with confidence*" (emphasis added). *Id.* at 6. The fourteen diseases categorized by the NRC report as having limited/suggestive evidence of an association with the VOCs at issue at Camp Lejeune are:

- Esophageal cancer (PCE)
- lung cancer (PCE)
- breast cancer (PCE)
- bladder cancer (PCE)
- kidney cancer (PCE and TCE)
- adult leukemia (solvent mixtures)
- multiple myeloma (solvent mixtures)
- myelodysplastic syndromes (solvent mixtures)
- renal toxicity (solvent mixtures)
- hepatic steatosis (solvent mixtures)
- female infertility (with concurrent exposure to solvent mixtures)
- miscarriage, with exposure during pregnancy (PCE)
- scleroderma (solvent mixtures)
- neurobehavioral effects (solvent mixtures). *Id.* at 8.

The NRC based this categorization on its conclusion that "the epidemiologic studies give some reason to be concerned that sufficiently high levels of the chemical may cause the disease, but the studies do not provide strong evidence that they actually do so". *Id.* at 7. Specific to the research studies conducted by the ATSDR, the NRC stated that they may not have produced definitive results because of the difficulties inherent in attempting to reconstruct past events and determine the amount of exposure experienced by any given individual. *Id.* at 195.

B. Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012

On August 6, 2012, Congress enacted the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112–154 (hereinafter "Camp Lejeune Act"). Section 102 of the Camp Lejeune Act established health care entitlement for veterans who served on active duty at Camp Lejeune for at least thirty days during the period between January 1, 1957, through December 31, 1987, for treatment of the fourteen conditions identified by the NRC as well as non-Hodgkin's lymphoma. Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112–154, section 102(a), 126 Stat. 1165, 1167 (2012) (codified at 38 U.S.C. 1710(e)(1)(F)). Congress later amended this time period to expand health care eligibility to those serving at Camp Lejeune from August 1, 1953 through December 31, 1987. Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, Div. I, Title II, section 243. The Camp Lejeune Act also extended healthcare benefits in the form of reimbursements to certain family members of veterans who also resided at Camp Lejeune during the qualifying period. Camp Lejeune Act, section 102(b) (codified at 38 U.S.C. 1787).

The Camp Lejeune Act noted that medical care is being afforded "notwithstanding that there is insufficient medical evidence to conclude that such illnesses or conditions are attributable to such service" or "residence." *Id.* Section 102(a) and (b) (codified at 38 U.S.C. 1710(e)(1)(F) and 1787(a)). Despite the NRC's report noting the difficulty of establishing direct scientific evidence of causation between the contaminated drinking water and the development of disease over time, Congress sought a policy that "gives sick veterans and their families the benefit of the doubt their illness or condition was caused by the water at Camp Lejeune so they can finally get the healthcare they need." *Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Proceedings and Debates of the 112 Congress, Second Session,* 158 Cong. Rec. S5154–04, 2012 WL 2923422 (2012) (statement of Sen. Murray). This law, however, is limited to the provision of healthcare for the named disabilities. It does not establish a presumption of service connection for purposes of entitlement to VA disability compensation and other benefits.

C. VA's Method of Analysis

On August 3, 2015, the Secretary of Veterans Affairs announced that he had met with members of Congress, as well as the Director of ATSDR, to discuss the possibility of creating presumptions of service connection for those who served at Camp Lejeune and may have been exposed to the contaminated water supply. News Release, U.S. Department of Veterans Affairs, VA Expands Review of Chemical Exposure in Drinking Water at Marine Corps Base Camp Lejeune (August 3, 2015). Following that announcement, VA began a deliberative process to determine whether available scientific evidence was sufficient to support a presumption of service connection for any health conditions as a result of exposure to the chemicals found in the contaminated drinking water at Camp Lejeune.

At VA's request, ATSDR collaborated with VA's Camp Lejeune Science Liaison Team (CLSLT). The CLSLT was chaired by the Chief Medical Officer of the Veterans Health Administration (VHA) and consisted of representatives from VHA's Post-Deployment Health Services (Office of Patient Care Services) and the Veterans Benefits Administration's Compensation Service. The purpose of ATSDR's collaboration with the CLSLT was to provide VA with its evaluation of the scientific literature regarding the potential hazards generally associated with the contaminants found in the water at Camp Lejeune during the contamination period (but not specifically associated with exposures at Camp Lejeune). The CLSLT presented its hazard evaluation to a newly formed VA Technical Workgroup (TWG), represented by subject matter experts in disability compensation, health care, environmental medicine, toxicology, epidemiology, Federal rulemaking, communications, and veterans benefits law. The CLSLT presented the VA TWG with its findings based on the CLSLT's independent review of the scientific literature and discussions with ATSDR staff. In this review, the CLSLT summarized the weight of evidence for all health conditions for which an association with the chemicals of interest has been suggested. The environmental health experts on the TWG then conducted their own assessment of the scientific evidence.

The TWG's assessment focused on the strength of the evidence that a chemical is capable of causing a given health condition (commonly referred to as a hazard evaluation); the TWG's assessment did not take into account the estimated levels of contamination in the water during the period of contamination at Camp Lejeune. As such, the TWG did not attempt to characterize the risk associated with the estimated exposures of those who resided at Camp Lejeune during the period of contamination.

The TWG evaluation relied upon comprehensive hazard evaluations conducted by the following internationally respected expert bodies: The Environmental Protection Agency's Integrated Risk Information System (EPA/IRIS), the National Institute of Health's National Toxicology Program

(NIH/NTP), the World Health Organization's International Agency for Research on Cancer (WHO/IARC), and the National Academies of Sciences' National Research Council and Institute of Medicine (NAS/NRC/IOM). These organizations were chosen for their rigorous expert selection and peer review processes to ensure objective and nuanced conclusions.

As previously discussed, the findings of a report on the contaminated water at Camp Lejeune published by the NRC in 2009 reviewed the health effects associated with TCE, PCE, and solvent mixtures and were the basis of the 2012 Camp Lejeune Act. Starting with the findings of the 2009 NRC study, the TWG analyzed additional scientific data to determine if additional evidence existed to support a causal relationship between various conditions and the contaminants found in the water supply at Camp Lejeune. The TWG review evaluated the hazards associated with not only these chemicals, but benzene and vinyl chloride as well, thus broadening the scope beyond that of the 2009 NRC assessment. The TWG was particularly interested in weight of evidence evaluations conducted since the 2009 study, as they incorporate scientific information that was not available when the NRC's 2009 report was being developed. Furthermore, because each of these expert bodies reviewed the literature through different scientific perspectives, this approach provided the TWG with increased confidence in its conclusions.

The TWG examined the results of EPA's Toxicological Reviews for the IRIS program (TCE, 2011; PCE, 2012; benzene, 2002; and vinyl chloride, 2000), the WHO's IARC Monographs on the Evaluation of Carcinogenic Risks to Humans (TCE, 2014; PCE, 2014; benzene, 2012; and vinyl chloride, 2013), and the NIH's NTP Report on Carcinogens (TCE, 2015; PCE, 2014; benzene, 2014; and vinyl chloride, 2014). In addition to the 2009 NRC report, the TWG drew on two other NAS reports, both published by the IOM: Gulf War and Health, vol. 2: Insecticides and Solvents (2003) and Review of the VA Clinical Guidance for Health Conditions Identified by the Camp Lejeune Legislation (2015). Section E below contains full references for all scientific literature reviewed by the TWG.

D. Results of the TWG Analysis

The TWG found that at least one of the internationally recognized scientific authorities cited above recently concluded that there is strong evidence supporting a causal relationship between kidney cancer and TCE (EPA 2011, IARC 2014, NTP 2015), adult leukemia and benzene (EPA 2002, IARC 2012, IOM 2003, NTP 2014), non-Hodgkin's lymphoma and TCE (NTP 2015), and liver cancer and vinyl chloride (EPA 2000, IARC 2012, NTP 2014). Note that this list includes liver cancer, which was not named in the Camp Lejeune Act. Liver cancer was included in the list of health conditions as studies have established a causal relationship exists between liver cancer and vinyl chloride, and because the effects of vinyl chloride were not included in the 2009 NRC report's review of adverse health effects resulting from exposure, although it was identified in the water at Camp Lejeune.

The TWG also noted that both the EPA (2002) and the IOM (2003) concluded that there is evidence supporting a causal relationship between aplastic anemia and other myelodysplastic syndromes and benzene, which appears to be supported by NTP (2012). The TWG also found that at least one of the internationally recognized scientific authorities cited above recently concluded that there is a positive association between bladder cancer and PCE (EPA 2012, IARC 2014, IOM 2003) and between multiple myeloma and PCE (EPA 2012) and benzene (IARC 2012).

In the context of providing VA with clinical guidance for implementing the 2012 Camp Lejeune Act, the IOM (2015) identified four published scientific analyses that address solvent exposure that had not been available during the NAS 2009 study. The IOM committee concluded that "Parkinson's disease is a neurobehavioral effect that may have resulted from consumption of contaminated drinking water at Camp Lejeune." IOM (2015) at 39.

Although the CLSLT recommended to VA that they propose the creation of a presumption for scleroderma, additional reviews by the TWG concluded that the evidence is currently not strong enough to establish a positive association between any of the VOCs of interest and the development of scleroderma. Evaluations conducted by EPA (2011), IARC (2014), and NRC/IOM (2009) discuss a probable link between exposure to TCE and autoimmune diseases in general; however, none of the internationally recognized scientific authorities cited above concluded that there is positive association between scleroderma and the VOCs of interest, due in part to insufficient sample sizes and uncertainties about the cause of gender-specific differences. Therefore, the TWG did not recommend the creation of a presumption for scleroderma at this time, even though it was included in the Camp Lejeune Act.

Likewise, none of the internationally recognized scientific authorities cited above concluded that there is a positive association between breast cancer, lung cancer, or esophageal cancer and the VOCs of interest. As such, the TWG concluded that the evidence was not strong enough to support recommending the creation of presumptions for these conditions at this time, even though they were included in the Camp Lejeune Act.

Because the TWG analysis was conducted in the context of a rulemaking to establish presumptions of service connection for diseases associated with exposure to the VOCs of interest, the TWG did not recommend establishing presumptions for health effects that are not themselves diagnosed diseases or clearly associated with a specific diagnosis and therefore do not represent a disability for the purposes of VA compensation benefits. See 38 U.S.C. 1110. This is consistent with VA's practice in establishing presumptions of service connection for diseases arising potentially years after exposures of interest. For the purposes of entitlement to disability compensation and related benefits, the health endpoint must be associated with a diagnosis of a chronic disability. The TWG concluded that, at this time, there is not a specific or generalizable diagnosis of a disability related to renal toxicity or hepatic steatosis that may have been caused by exposure to the contaminants. Similarly, neither female infertility nor miscarriage, in and of themselves, are disabilities for which VA can provide disability compensation. Further, the NRC findings regarding female infertility and miscarriage were limited to exposure concurrent with those health effects and therefore would not provide a basis for presuming current health effects of this type to be associated with past exposure.

E. Weight-of-Evidence Analyses Considered by the TWG

- EPA. IRIS Toxicological Review of Benzene. U.S. Environmental Protection Agency, Washington, DC, EPA/635/R–02/001F, 2002. (EPA 2002)
- EPA. IRIS Toxicological Review of Tetrachloroethylene. U.S. Environmental Protection Agency, Washington, DC, EPA/635/R–08/011F, 2012. (EPA 2012)
- EPA. IRIS Toxicological Review of Trichloroethylene. U.S. Environmental Protection Agency,

Washington, DC, EPA/635/R–09/011F, 2011. (EPA 2011)

- EPA. IRIS Toxicological Review of Vinyl Chloride. U.S. Environmental Protection Agency, Washington, DC, EPA/635R–00/004, 2000. (EPA 2000)
- IARC Working Group on the Evaluation of Carcinogenic Risk to Humans. Chemical Agents and Related Occupations. Lyon (FR): International Agency for Research on Cancer; 2012. (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 100F.) (IARC 2012)
- IARC Working Group on the Evaluation of Carcinogenic Risk to Humans. Trichloroethylene, Tetrachloroethylene, and Some Other Chlorinated Agents. Lyon (FR): International Agency for Research on Cancer; 2014. (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 106.) (IARC 2014)
- Institute of Medicine. Gulf War and Health: Volume 2. Insecticides and Solvents. Washington, DC: The National Academies Press, 2003. (IOM 2003)
- Institute of Medicine. Review of VA Clinical Guidance for the Health Conditions Identified by the Camp Lejeune Legislation. Washington, DC: The National Academies Press, 2015. (IOM 2015)
- National Research Council. Contaminated Water Supplies at Camp Lejeune: Assessing Potential Health Effects. Washington, DC: The National Academies Press, 2009.
- National Toxicology Program. 2014. *Report on Carcinogens, Thirteenth Edition*. Research Triangle Park, NC: U.S. Department of Health and Human Services, Public Health Service. *http://ntp.niehs.nih.gov/pubhealth/roc/roc13/*
- National Toxicology Program. 2015. Report on Carcinogens, Monograph on Trichloroethylene. *http://ntp.niehs.nih.gov/ntp/roc/monographs/finaltce_508.pdf*

III. Secretary's Proposal

A. Secretary's Authority

Section 501(a)(1) of title 38, United States Code, provides that "[t]he Secretary has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by [VA] and are consistent with those laws, including . . . regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws." This broad authority encompasses the establishment of an evidentiary presumption of service connection and exposure under specified circumstances, provided there is a rational basis for the presumptions. In this case, the Secretary has determined that proof of qualifying service at Camp Lejeune, consistent with the statute providing health care coverage for Camp Lejeune veterans, and the subsequent development of one or more of the eight disabilities identified by the TWG is sufficient to support proposing a presumption that the resulting disability was incurred in the line of duty during active military, naval, or air service, to include qualifying reserve or National Guard service, to establish entitlement to service connection. See 38 U.S.C. 1110.

VA notes it is well-established that the Secretary's authority under 38 U.S.C. 501(a)(1) includes issuing discretionary regulations for presumptive service connection, as evidenced by past rulemakings (issued in response to National Academy of Sciences' studies of exposures) to establish presumptive service connection for Amyotrophic Lateral Sclerosis (see 73 FR 54691), presumptive service connection for exposure to herbicides for certain qualifying individuals aboard C–123 aircraft (see 80 FR 35246), and presumptive service connection for various diseases in veterans with exposure to specified vesicant agents (see 59 FR 42497).

B. Presumptive Conditions

Based upon the results of the TWG analysis, the Secretary proposes that VA acknowledge the relationship between exposure to contaminants in the water supply at Camp Lejeune (in unknown quantities) and the subsequent development of the following health conditions: Kidney cancer, non-Hodgkin's lymphoma, adult leukemia, liver cancer, bladder cancer, multiple myeloma, Parkinson's disease, and aplastic anemia and other myelodysplastic syndromes.

Because these health conditions represent a disability, VA proposes to amend 38 CFR 3.307 to establish presumptions of service connection associated with exposure to contaminants in the water supply at Camp Lejeune. VA also proposes to amend 38 CFR 3.309 to prescribe the conditions that are subject to presumptive service connection in relation to exposure to the contaminants in the Camp Lejeune water supply. At this time, VA does not propose to establish presumptions of service connection for any other conditions. VA may consider additional rulemaking in the future, consistent with the available science at that time.

C. Exposure Requirements

VA proposes to presume exposure to contaminants in the water supply at Camp Lejeune for all active duty, reserve, and National Guard personnel who served for no less than 30 days (consecutive or nonconsecutive) at Camp Lejeune during the period beginning August 1, 1953, and ending on December 31, 1987. VA proposes to include both consecutive and nonconsecutive days in the calculation of the 30-day requirement to clarify that VA will presume exposure to contaminants in the water supply at Camp Lejeune for veterans who may have served at Camp Lejeune on multiple occasions that total no less than 30 days.

VA based its determination to require no less than 30 days of service at Camp Lejeune to establish a presumption of exposure to contaminants in the water supply based on both the available scientific evidence and prior implementation of the provisions of section 102 of the Camp Lejeune Act. As previously discussed, the TWG's assessment relied on a hazard evaluation model, focusing on the conclusions of internationally respected expert scientific bodies. The TWG did not take into account the estimated levels of contamination in the water at Camp Lejeune and therefore could not characterize any risk associated with a specific level of exposure to contaminated water. As the available scientific evidence does not provide specific data on exposure levels, VA proposes to use its prior implementation of the health care provisions of Public Law 112–154 as a guide.

While section 102 of Public Law 112–154 requires that the veteran served at Camp Lejeune for at least 30 days, it does not specify whether these days must be consecutive. VA's implementation of the provisions of section 102, contained in 38 CFR 17.400, requires that a veteran served at least 30 days at Camp Lejeune to establish entitlement to health care. 78 FR 55671. Section 17.400 specifically notes that the 30 days may be consecutive or non-consecutive. While VA is not bound by Public Law 112–154 or 38 CFR 17.400 in proposing the current presumptions of exposure and service connection, VA has determined that inclusion of the 30-day requirement would ensure consistency and parity with both its healthcare regulations and the statute.

However, the enactment of Public Law 112–154, by itself, does not provide a legal requirement for prescribing a 30-day service requirement for the purposes of disability compensation. Further, Congress did not provide any scientific references for prescribing a 30-day service requirement when it enacted Public Law 112–154. VA acknowledges that current science establishes a link between exposure to certain chemicals found in the water supply at Camp Lejeune and later development of one of the proposed presumptive conditions. However, VA experts agree that there is no science to support a specific minimum exposure level for any of the conditions. Therefore, VA welcomes comments on this requirement and will consider other practical alternatives when drafting the final rule.

VA also notes that the proposed 30-day requirement serves to establish eligibility for service connection on a presumptive basis; nothing in this proposed regulation prohibits consideration of service connection on a non-presumptive basis. Veterans without the requisite 30 days of service at Camp Lejeune may still establish service connection for any disease or disability on a direct basis. Direct service connection for any disease alleged to have been caused by contaminants in the water supply at Camp Lejeune requires evidence of a current disease or disability, evidence of exposure to the contaminated water at Camp Lejeune, and a medical nexus between the two, supported by a sufficient scientific explanation.

D. Application to Reservists and National Guard

Basic eligibility for VA benefits requires that an individual be a "veteran" as that term is defined in 38 U.S.C. 101(2): "The term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." Reserve or National Guard service during a period of active duty for training or inactive duty training generally does not qualify an individual as a "veteran" because it does not constitute "active military, naval or air service," unless the individual is disabled or dies during that period of service as prescribed by 38 U.S.C. 101(24)(B) and (C).

This proposed rule would establish presumptions that former reservists and National Guard members were exposed to contaminants in the water supply between August 1, 1953 and December 31, 1987, if their military personnel record includes orders or other records of no less than 30 days service (consecutive or nonconsecutive) at Camp Lejeune during the contamination period, and would allow them to establish veteran status by presuming that a covered disability was incurred in the line of duty and arose during the qualifying period of service.

Although 38 U.S.C. 101(24) requires a period of active duty for training or inactive duty training "during which the individual concerned was disabled or died" for a period of active duty for training or inactive duty training to constitute "active military, naval, or air service," the latent effects of exposures to certain harmful chemicals were unrecognized when section 101(24) was enacted in 1958. The legislative history regarding the enactment of section 101(24) does not specifically explain Congress' intent in requiring that the individual "was disabled or died" during the period of service. It is probable that Congress required a reserve component member to have been disabled "during" training because the medical science of the time understood that, if an in-service injury were to result in disability, at least some aspect of that disability generally would be manifest contemporaneous with the injury. However, subsequent developments with regard to medical understanding of the health effects of harmful chemical exposures, such as the VOCs that contaminated the Camp Lejeune water supply, raise a question regarding the application of section 101(24) to disability associated with such exposure.

Viewing the generally beneficial purpose of section 101(24) in light of an evolved medical understanding, the Secretary believes it is reasonable to propose a factual presumption that disability occurred during the period of service as required under section 101(24) when an individual has a present disability from: Kidney cancer, liver cancer, adult leukemia, non-Hodgkin's lymphoma, bladder cancer, multiple myeloma, aplastic anemia and other myelodysplastic syndromes, and Parkinson's disease. Specifically, the proposed disease presumptions enumerated in 38 CFR 3.309, coupled with the potential for clinical uncertainty regarding when such diseases first manifested, provide a reasonable basis for presuming that disability occurred during a period of reserve or National Guard service for purposes of satisfying the requirements under section 101(24)(B) or (C) in order to ensure compensation and health care for reservists and National Guard personnel disabled as a result of exposure to the contaminants in the water supply at Camp Lejeune on qualifying reserve and National Guard duty.

IV. Application of Rulemaking to Previously Adjudicated Claims

This proposed rule would apply to claims received by VA on or after the date of publication of the final rule in the **Federal Register** and to claims pending before VA on that date. This proposed rule would not apply retroactively to claims previously adjudicated. VA would adhere to the provisions of its change of law regulation, 38 CFR 3.114, which states, "[w]here pension, compensation, dependency and indemnity compensation, . . . is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue." *See also* 38 U.S.C. 5110(g).

This proposed regulation is based on the Secretary's broad authority under 38 U.S.C. 501(a) to "prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and are consistent with those laws, including— . . . regulations with respect to the nature and extent of proof and evidence . . . in order to establish the right to benefits under such laws." This rulemaking authority does not explicitly afford the Secretary authority to assign retroactive effect to the regulations created thereunder. It is well-settled that "[r]etroactivity is not favored in the law. . . . [A] statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988). As there is no explicit statutory authority to apply this proposed regulation retroactively, the Secretary, based on the current state of the scientific evidence, will take into consideration the evidentiary burden on claimants for certain Camp Lejeune contaminated water related claims pending (for the diseases specified in the proposed regulation) at the time of publication of the final rule and for all future claims.

Although this proposed regulation would not apply retroactively, a claimant whose claim was previously and finally denied may file a new claim to obtain a new determination of entitlement under the final regulation. *See Spencer* v. *Brown,* 17 F.3d 368, 372

(Fed. Cir. 1994) ("'When a provision of law or regulation creates a new basis of entitlement to benefits, as through liberalization of the requirements for entitlement to a benefit, an applicant's claim of entitlement under such law or regulation is a claim separate and distinct from a claim previously and finally denied prior to the liberalizing law or regulation.'") (quoting *Spencer* v. *Brown,* 4 Vet. App. 283, 288–89 (1993)).

V. Regulation Amendments

VA proposes to amend the § 3.307 heading to read "Presumptive service connection for chronic, tropical or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with the contaminants in the water supply at Camp Lejeune; wartime and service on or after January 1, 1947." Likewise, VA proposes to revise paragraph (a) of § 3.307 to add the phrase ", or disease associated with the contaminants in the water supply at Camp Lejeune" after the words "herbicide agents." Both of these proposed amendments are necessary to inform the public that certain diseases associated with contaminants in the water supply at Camp Lejeune are now included among those covered by VA's proposed presumptive service connection regulations. Paragraph (a)(1) of § 3.307 establishes service criteria necessary to establish entitlement to presumptive treatment of a disease related to particular types of exposure. VA proposes to amend this paragraph to specify that any period of service is sufficient for purposes of presumptive service connection of conditions associated with service at Camp Lejeune, as long as the service also satisfies the requirements to establish a presumption of exposure to contaminants in the water supply at that facility under § 3.307(a)(7)(iii).

As noted above, VA previously implemented health care benefits for veterans who served on active duty at Camp Lejeune for at least thirty days (consecutive or nonconsecutive) during the contamination period through 38 CFR 17.400. To maintain consistency and parity with VA's interpretation of Public Law 112–154 in implementing its healthcare regulations, VA proposes that a veteran, or former reservist or National Guard member, must have a record of no less than 30 days of service (consecutive or nonconsecutive) at Camp Lejeune for any period between the prescribed dates to establish service connection on a presumptive basis for the eight conditions addressed in this proposed rule. Service at Camp Lejeune, for the purpose of establishing service connection on a presumptive basis, means that the veteran, or former reservist or National Guard member, as established by military orders or other official service department records, lived or worked within the confines of the Camp Lejeune border. Any such veteran, or former reservist or National Guard member, could have been exposed to contaminants in the water supply through drinking, bathing or other activities. We believe that military orders or other official service department records documenting no less than 30 days of service at Camp Lejeune provide a rational basis for presuming that the individual likely had more than isolated and minimal opportunity for contact with the relevant VOCs.

VA also proposes adding paragraph (a)(7) to § 3.307 to describe entitlement criteria for diseases associated with exposure to contaminants in the water supply at Camp Lejeune. Paragraph (a)(7)(i) defines "contaminants in the water supply" to mean the on-base water-supply systems located at Camp Lejeune that were contaminated with TCE, PCE, benzene, and vinyl chloride during the period beginning August 1, 1953, and ending December 31, 1987. Proposed paragraph (a)(7)(ii) cross-references proposed § 3.309(f), which lists the diseases that are presumptively service connected based on exposure to contaminants in the water supply at Camp Lejeune, and requires that they manifest to a compensable degree at any time after service for VA to award presumptive service connection. Proposed paragraph (a)(7)(iii) describes the population covered by the presumption of exposure.

Proposed paragraph (a)(7)(iii) applies the presumption of exposure to a veteran, reservist, or National Guard member who had no less than 30 days of service (consecutive or nonconsecutive) at Camp Lejeune at any time during the period beginning August 1, 1953, and ending December 31, 1987. Such individuals are presumed to have been exposed to the contaminants in the water supply at Camp Lejeune, unless there is affirmative evidence to establish that there was no such exposure. Affirmative evidence showing that there was no exposure is likely to be rare, but if there is evidence showing that the veteran was not actually exposed to contaminants in the water supply, the veteran must establish that the disability is related to military service in some other way (*e.g.,* had its onset during service). The disability will not be presumed to have been caused by contaminants in the water supply at Camp Lejeune.

VA proposes to prescribe the same contamination period as 38 U.S.C. 1710(e)(1)(F). As noted above, section 1710(e)(1)(F) was amended by Public Law 113–235 to change the Camp Lejeune contamination period to August 1, 1953, through December 31, 1987. The legislative history does not explain why Congress selected this contamination period, but it is likely based on some of the earliest assessments of the Camp Lejeune water supply noted in the NRC report. *Contaminated Water Supplies,* at 60. This period represents the ATSDR's best estimate of the period of contamination at Camp Lejeune and likely captures all potentially affected veterans.

Paragraph (a)(7)(iii) also defines "service at Camp Lejeune" as any service within the borders of the entirety of the United States Marine Corps Base Camp Lejeune and Marine Corps Air Station New River, North Carolina, during the relevant period, as established by military orders or other service department records. Neither the statute nor the legislative history of Public Law 112–154 indicates Congress' intent as to the geographic area covered by reference to "Camp Lejeune, North Carolina" in 38 U.S.C. 1710(e)(1)(F). VA acknowledges that it would be too difficult to determine with specificity which residential or workplace facilities were serviced with the contaminated water, or whether and to what degree the veteran would have come into contact with that facility during active service. Therefore, this proposed rule covers any veteran, reservist, or member of the National Guard, whose military orders or records establish their presence within the borders of the entirety of the United States Marine Corps Base Camp Lejeune border, which includes Marine Corps Air Station New River, for no less than 30 days (consecutive or nonconsecutive) and therefore could potentially have come into physical contact (*e.g.,* by drinking or bathing) with contaminants in the water supply on more than an isolated and minimal basis. VA specifically included Marine Corps Air Station New River in the definition of service Camp Lejeune to clarify that official military records indicating service at Marine Corps Air Station New River are sufficient to establish service at Camp Lejeune for the purposes of this rulemaking. This would ensure consistency with the definition of Camp Lejeune in 38 CFR 17.400(b) for purposes of health care.

Proposed paragraph (a)(7)(iv) prescribes that the presumed exposure to contaminants in the water supply is an "injury" under section 101(24)(B) and (C). In turn, if an individual develops a presumptive disease listed in 38 CFR 3.309(f), "VA will presume that the individual concerned became disabled during that service for purposes of establishing that the individual served in the active military, naval, or air service." As explained previously, this is consistent with section 101(24) because exposure to contaminants in the water supply at Camp Lejeune is associated with latent adverse health effects that were largely unrecognized in 1958. Covered individuals may therefore establish veteran status for purposes of VA's disability compensation, dependency and indemnity compensation, medical care, and burial benefits related to any Camp Lejeune-related presumptive condition.

VA also proposes to amend 38 CFR 3.309 by adding paragraph (f). This proposed paragraph is titled "Disease associated with exposure to contaminants in the water supply at Camp Lejeune." The primary purpose of this proposed amendment is to list the diseases that are presumptively service connected based on exposure to contaminants in the water supplies at Camp Lejeune during the exposure period. For the reasons described above, the diseases are as follows: Kidney cancer, liver cancer, non-Hodgkin's lymphoma, adult leukemia, multiple myeloma, Parkinson's disease, aplastic anemia and other myelodysplastic syndromes, and bladder cancer. Proposed paragraph (f) notes that the provisions of 38 CFR 3.307(d), regarding circumstances in which presumptions of service connection may be rebutted, apply to these presumptions.

Administrative Procedure Act

The Secretary of Veterans Affairs is providing a 30 day period for public comment. Kidney cancer, liver cancer, non-Hodgkin's lymphoma, adult leukemia, multiple myeloma, Parkinson's disease, bladder cancer, and aplastic anemia and other myelodysplastic syndromes are debilitating and life-threatening illnesses, and any delay in implementing a final rule could have severe detrimental impact on Veterans exposed to contaminants in the water supply at Camp Lejeune now suffering from these diseases. Based on the age of the individuals affected by this proposed rule and the severity of the disabilities associated with their exposure, it is likely that affected individuals would have significant and urgent financial and medical needs. In the absence of a shortened public comment period and publication of a final rule, these Veterans may not receive proper health care or assistance with daily functions due to financial hardship or the absence of service-connected status for their disability.

While VA believes the severity of the conditions and the age of the individuals affected themselves justify a 30 day period for public comment, there is an even more acute basis for the Secretary's decision. VA is aware of roughly thirty individuals who are terminally ill, and would be covered by the presumptions in the event they become effective. Provision of a 60-day comment period would increase the likelihood that some affected veterans who have incurred or will incur one or more of the covered illnesses will die from the disease before a final rule could be issued. In order for these individuals to have access to VA health care, some for the first time, and disability compensation benefits, it is critical that VA establish these presumptions as soon as possible. Therefore, the Secretary is providing a public comment period of 30 days. VA invites public comments on this proposed rule and notes that it will fully consider and address any comments received.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may have an annual effect on the economy of $100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for "VA Regulations Published from FY 2004 Through Fiscal Year to Date."

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would directly affect only individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on August 30, 2016, for publication.

Dated: September 1, 2016.

Michael Shores,

Acting Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Veterans.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.307 by revising the section heading and paragraphs (a) introductory text and (a)(1), and adding paragraph (a)(7) to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with contaminants in the water supply at Camp Lejeune; wartime and service on or after January 1, 1947.

(a) *General.* A chronic, tropical, prisoner of war related disease, a disease associated with exposure to certain herbicide agents, or a disease associated with contaminants in the water supply at Camp Lejeune listed in § 3.309 will be considered to have been incurred in or aggravated by service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in § 3.309(a) will be considered chronic.

(1) *Service.* The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period, or which began before and extended beyond December 31, 1946, or began after that date. Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in § 3.309(c) and (e). Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in § 3.309(f), as long as the period of service also satisfies the requirements to establish a presumption of exposure to contaminants in the water supply at Camp Lejeune under paragraph (a)(7)(iii) of this section.

* * * * *

(7) *Diseases associated with exposure to contaminants in the water supply at Camp Lejeune.* (i) For the purposes of this section, *contaminants in the water supply* means the volatile organic compounds trichloroethylene (TCE), perchloroethylene (PCE), benzene and vinyl chloride, that were in the on-base water-supply systems located at United States Marine Corps Base Camp Lejeune, during the period beginning on August 1, 1953, and ending on December 31, 1987.

(ii) The diseases listed in § 3.309(f) shall have become manifest to a degree of 10 percent or more at any time after service.

(iii) A veteran, or former reservist or member of the National Guard, who had no less than 30 days (consecutive or nonconsecutive) of service at Camp Lejeune during the period beginning on August 1, 1953, and ending on December 31, 1987, shall be presumed to have been exposed during such service to the contaminants in the water supply, unless there is affirmative evidence to establish that the individual was not exposed to contaminants in the water supply during that service. The last date on which such a veteran, or former reservist or member of the National Guard, shall be presumed to have been exposed to contaminants in the water supply shall be the last date on which he or she served at Camp Lejeune during the period beginning on August 1, 1953, and ending on December 31, 1987. For purposes of this section, *service at Camp Lejeune* means any service within the borders of the entirety of the United States Marine Corps Base Camp Lejeune and Marine Corps Air Station New River, North Carolina, during the period beginning on August 1, 1953, and ending on December 31, 1987, as established by military orders or other official service department records.

(iv) Exposure described in paragraph (a)(7)(iii) of this section is an injury under 38 U.S.C. 101(24)(B) and (C). If an individual described in paragraph (a)(7)(iii) of this section develops a disease listed in 38 CFR 3.309(f), VA will presume that the individual concerned became disabled during that service for purposes of establishing that the individual served in the active military, naval, or air service.

(Authority: 38 U.S.C. 501(a))

■ 3. Add § 3.309(f) to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(f) *Disease associated with exposure to contaminants in the water supply at Camp Lejeune.* If a veteran, or former reservist or member of the National Guard, was exposed to contaminants in the water supply at Camp Lejeune during military service and the exposure meets the requirements of § 3.307(a)(7), the following diseases shall be service-connected even though there is no record of such disease during service, subject to the rebuttable presumption provisions of § 3.307(d).

(1) Kidney cancer.
(2) Liver cancer.
(3) Non-Hodgkin's lymphoma.
(4) Adult leukemia.
(5) Multiple myeloma.
(6) Parkinson's disease.
(7) Aplastic anemia and other myelodysplastic syndromes.
(8) Bladder cancer.

(Authority: 38 U.S.C. 501(a))

[FR Doc. 2016–21455 Filed 9–8–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2016–0453; FRL–9951–85–Region 7]

State of Iowa; Approval and Promulgation of the Title V Operating Permits Program, the State Implementation Plan, and 112(l) Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Iowa Title V Operating Permits Program, the State Implementation Plan (SIP), and the 112(l) plan. The submission revises the Title V Operating Permits Program to include a new chapter to address fees for services by the air quality program. Administrative revisions made with this rulemaking to the SIP and 112(l) plan are associated with the new chapter.

DATES: Written comments must be received by October 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0453, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7039, or by email at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action to approve revisions to the Iowa Title V Operating Permits Program, the State Implementation Plan (SIP), and the 112(l) plan. We have published a direct final rule approving the State's SIP revision(s) in the Rules and Regulations section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects

40 CFR Part 52

Environmental protection, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 24, 2016.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2016–21468 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2014–0568; FRL–9950–97–Region 3]

Outer Continental Shelf Air Regulations Consistency Update for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act, as amended in 1990 (the Act). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. In the Rules and Regulations section of this **Federal Register**, EPA is taking this action as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2014–0568 at *http://www.regulations.gov,* or via email to *campbell.dave@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the Rules and Regulations section of this **Federal Register** publication.

Dated: August 2, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–21459 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2016–0428, 0430, 0432, 0433, 0434, 0435, 0436 and 0437; FRL–9952–05–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “the Act”), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (“NPL”) constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (“EPA” or “the agency”) in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rulemaking proposes to add eight sites to the General Superfund section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 8, 2016.

ADDRESSES: Identify the appropriate docket number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID number
Post and Lumber Preserving Co. Inc	Quincy, FL	EPA–HQ–OLEM–2016–0428
Microfab Inc (Former)	Amesbury, MA	EPA–HQ–OLEM–2016–0430
Old HWY 275 and N 288th Street	Valley, NE	EPA–HQ–OLEM–2016–0432
Anaconda Copper Mine	Yerington, NV	EPA–HQ–OLEM–2016–0433
Saint-Gobain Performance Plastics	Village of Hoosick Falls, NY	EPA–HQ–OLEM–2016–0434
The Battery Recycling Company	Bo. Cambalache, PR	EPA–HQ–OLEM–2016–0435
Former Custom Cleaners	Memphis, TN	EPA–HQ–OLEM–2016–0436
Highway 18 Ground Water	Kermit, TX	EPA–HQ–OLEM–2016–0437

Submit your comments, identified by the appropriate docket number, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* To send a comment via the United States Postal Service, use the following address:

U.S. Environmental Protection Agency, EPA Superfund Docket Center, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Use the Docket Center address below if you are using express mail, commercial delivery, hand delivery or courier. Delivery verification signatures will be available only during regular business hours:

EPA Superfund Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004.

For additional docket addresses and further details on their contents, see section II, “Public Review/Public Comment,” of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the "General Superfund section"), and one of sites that are owned or operated by other federal agencies (the "Federal Facilities section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System ("HRS") score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP):

(1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

(2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2).

(3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the "Jones Co. Plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. Plant site," does not imply that the Jones Company is responsible for the contamination located on the plant site.

The EPA regulations provide that the remedial investigation ("RI") "is a process undertaken . . . to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility Study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's Internet site at *https://www.epa.gov/superfund/superfund-remedial-performance-measures#cc_anchor.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#tab-9.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing*.

The EPA is improving the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, is available on the EPA's Web site at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing*.

II. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public dockets located both at the EPA Headquarters in Washington, DC, and in the regional offices. These documents are also available by electronic access at *http://www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How do I access the documents?

You may view the documents, by appointment only, in the Headquarters or the regional dockets after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding federal holidays. Please contact the regional dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office, 1301 Constitution Avenue NW., William Jefferson Clinton Building West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to the EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Cathy Amoroso, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8637.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
- Brian Mitchell, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRERNB, Lenexa, KS 66219; 913/551–7633.
- Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6578.
- Sharon Murray, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/947–4250.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

You may also request copies from the EPA Headquarters or the regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed only in-person; since the EPA dockets are not equipped to both copy and mail out such maps or scan them and send them out electronically.

You may use the docket at *http://www.regulations.gov* to access documents in the Headquarters docket (see instructions included in the **ADDRESSES** section). Please note that there are differences between the Headquarters docket and the regional dockets and those differences are outlined in this preamble, Sections II.C and D.

C. What documents are available for public review at the EPA Headquarters docket?

The Headquarters docket for this proposed rule contains the following for the sites proposed in this rule: HRS score sheets; documentation records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the documentation record.

D. What documents are available for public review at the EPA regional dockets?

The regional dockets for this proposed rule contain all of the information in the Headquarters docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the regional dockets.

E. How do I submit my comments?

Comments must be submitted to the EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What happens to my comments?

The EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that the EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). The EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public viewing in the electronic public docket at *http://www.regulations.gov* as the EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI) or other information whose disclosure is restricted by statute. Once in the public dockets system, select "search," then key in the appropriate docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to the EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In this proposed rule, the EPA is proposing to add eight sites to the NPL, all to the General Superfund section. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above.

The sites are presented in the table below.

GENERAL SUPERFUND SECTION

State	Site name	City/county
FL	Post and Lumber Preserving Co. Inc	Quincy.
MA	Microfab Inc (Former)	Amesbury.
NE	Old HWY 275 and N 288th Street	Valley.
NV	Anaconda Copper Mine	Yerington.
NY	Saint-Gobain Performance Plastics	Village of Hoosick Falls.
PR	The Battery Recycling Company	Bo. Cambalache.
TN	Former Custom Cleaners	Memphis.
TX	Highway 18 Ground Water	Kermit.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the

Executive Order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Dated: September 1, 2016.

Mathy Stanislaus,

Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2016–21626 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 16–975; MB Docket No. 16–270; RM–11772]

Radio Broadcasting Services; Pima, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the FM Table of Allotments, by substituting noncommercial educational Channel *278A for Channel *296A at Pima, Arizona to accommodate the hybrid application, requesting modification of the license for Station KIKO(FM) to specify operation on Channel 243C2 rather than Channel 247C2 at Claypool, Arizona. A staff engineering analysis indicates that Channel *278A can be allotted to Pima consistent with the minimum distance separation requirements of the Commission's rules with a site restriction 10 kilometers (6.2 miles) southeast of the community. The reference coordinates are 32–49–46 NL and 109–45–16 WL.

DATES: Comments must be filed on or before October 17, 2016, and reply comments on or before November 1, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the rule making petitioner and the counter proponent as follows: John F. Garziglia, Esq., Womble Carlyle Sandridge & Rice, LLP, 1200 19th Street NW., Suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nazifa Sawez, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 16–270, adopted August 25, 2016, and released August 26, 2016. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel *296A at Pima; and by adding Channel *278A at Pima.

[FR Doc. 2016–21764 Filed 9–8–16; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 511, 517, 532, 536, 543, 546, and 552

[GSAR Case 2015–G503; Docket No. 2016–0015; Sequence No. 1]

RIN 3090–AJ63

General Services Administration Acquisition Regulation (GSAR); Construction Contract Administration

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is issuing a proposed rule amending the General Services Administration Acquisition Regulation (GSAR) coverage on construction contracts, including provisions and clauses for solicitations and resultant contracts, to clarify, update, and incorporate existing construction contract administration procedures.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division on or before November 8, 2016 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR case 2015–G503 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "GSAR Case 2015–G503" under the heading "Comment or Submission". Select the link "Comment Now" that corresponds with GSAR Case 2015–G503. Follow the instructions provided on the screen. Please include your name, company name (if any), and "GSAR Case 2015–G503" on all attached document(s).
- *Mail:* General Services Administration, Regulatory Secretariat Division, 1800 F Street NW., ATTN: Ms. Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2015–G503 in all correspondence related to this case. All comments received will generally be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification about content, contact Ms. Christina Mullins, General Services Acquisition Policy Division, GSA, by phone at 202–969–4066 or by email at *Christina.Mullins@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division by mail at 1800 F Street NW., Washington, DC 20405, or by phone at 202–501–4755. Please cite the GSAR Case 2015–G503, Construction Contract Administration.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR part 536, Construction and Architect-Engineer Contracts, and related parts, to maintain consistency with the Federal Acquisition Regulation (FAR) and to clarify, update and incorporate existing construction contract administration guidance previously implemented through internal Public Building Service (PBS) policies.

The proposed rule changes fall into five categories: (1) Incorporating existing agency policy previously issued through other means, (2) reorganizing to better align with the FAR, (3) incorporating agency unique clauses, (4) incorporating supplemental material, and (5) editing for clarity. Bringing existing policy into the GSAR will allow for greater transparency and an opportunity for the public to comment on these longstanding procedures. The proposed rule includes a total of five new agency unique provisions and clauses, six new supplemental clauses, and revision and reorganization of eight existing provisions and clauses.

A GSAR rewrite initiative was undertaken by GSA to revise the GSAR starting in 2008. A proposed rule to update GSAR part 536, Construction and Architect-Engineer Contracts was initially published as GSAR Case 2008–G509 in the **Federal Register** at 73 FR 73199 on December 2, 2008. Due to the variety of issues addressed in the GSAR 536 rewrite, and internal stakeholder interest, the agency re-evaluated the implementation plan for the GSAR 536 rewrite and withdrew this initial proposed rule. The initial proposed rule withdrawal was published in the **Federal Register** at 80 FR 6944, on February 9, 2015. GSAR Case 2015–G503 is the second of several new GSAR cases to separately address the issues and update the GSAR 536 text.

II. Discussion and Analysis

The changes to the GSAR included in the proposed rule are summarized in this section.

1. Eight new clauses for construction contracts previously issued through other means are incorporated into GSAR parts 211, 232, and 236. The new clauses and a brief description are as follows:

Name and No.	Requirements	Prescription
552.211–10 Commencement, Prosecution, and Completion of Work.	Supplemental clause to FAR 52.211–10 to address notice to proceed, substantial completion, and phased work.	Same prescription as FAR clause.
552.211–12 Liquidated Damages—Construction.	Supplemental clause to FAR 52.211–12 to address substantial completion and phased work.	Same prescription as FAR clause.
552.211–13 Time Extensions	Supplemental clause to FAR 52.211–13 to address the project schedule as a baseline.	Same prescription as FAR clause.
552.211–70 Substantial Completion	Agency unique clause to define the term and address related requirements.	Prescription consistent with that for FAR 52.211–10.
552.232–5 Payments under Fixed-Price Construction Contracts.	Supplemental clause to FAR 52.232–5 to address pre-invoice payment meetings and clarify certification documentation required for payment.	Same prescription as FAR clause.
552.236–6 Superintendence by the Contractor	Supplemental clause to FAR 52.236–6 to address project management resources and responsibilities.	Clause prescription has no dollar threshold, which is more inclusive than the FAR clause that is only required at above simplified, in order to satisfy GSA specific contracting requirements.

Name and No.	Requirements	Prescription
552.236–15 Schedules for Construction Contracts.	Supplemental clause to FAR 52.236–15 to address milestone events, cost breakdown, and requirements for different project delivery methods.	Clause prescription has no dollar threshold, which is more inclusive than the FAR clause that is only required at above simplified, in order to satisfy GSA specific contracting requirements. The base clause provides guidance for any type of construction project. Alternate I of the clause provides guidance specific to a design-bid-build construction project. Alternate II of the clause provide guidance specific to a design-build construction project. A third alternate is contemplated for a construction-manager-as-constructor project delivery method and may appear in a separate case to update the GSAR 536 text.
552.236–71 Contractor Responsibilities	Agency unique clause to address requirements for different project delivery methods.	The base clause provides guidance for any type of construction project. Alternate I of the clause provides guidance specific to a design-build construction project. A second alternate is contemplated for a construction-manager-as-constructor project delivery method and may appear in a separate case to update the GSAR 536 text.

2. Seven existing clauses for construction contracts in GSAR parts 236 and 243 are revised and reorganized to better align with the FAR and to streamline the GSAR. The clauses and a brief description of the changes are as follows:

Name and No.	Requirements	Prescription
552.236–11 Use and Possession Prior to Completion.	Supplemental language to address unfinished work. Replaces previous GSAR 552.236–81, Use of Equipment by the Government, and is now better aligned with the FAR.	Clause prescription revised for general construction. Clause prescription also has no dollar threshold, which is more inclusive than the FAR clause that is only required at above simplified, in order to satisfy GSA specific contracting requirements.
552.236–21 Specifications and Drawings for Construction.	Supplemental language to address inconsistencies, and clarify definition of terms for different project delivery methods.	Clause prescription has no dollar threshold, which is more inclusive than the FAR clause that is only required at above simplified, in order to satisfy GSA specific contracting requirements.
	Revised title and clause numbering to better align with the FAR, previously was GSAR 552.236–77, Specifications and Drawings.	The base clause provides guidance for any type of construction project. Alternate I of the clause provides guidance specific to a design-build construction project. A second alternate is contemplated for a construction-manager-as-constructor project delivery method and may appear in a separate case to update the GSAR 536 text.
552.236–70 (Existing) Definitions	Clause deleted as it is not necessary	Clause deleted as it is not necessary.
552.236–70 (Revised) Authorities and Limitations.	Clause renumbered to streamline GSAM part 536. Previously was GSAR 552.236–71, Authorities and Limitations. Revised text to address non-compliance.	Clause prescription revised to include simplified acquisitions in order to be more consistent with current contracting practices.
552.236–72 Submittals	Revised title and clause numbering to better align the content and to streamline GSAR part 536. Previously was GSAR 552.236–78, Shop Drawings, Coordination Drawings, and Schedules. Revised to provide a broader definition of the term and to address response times, notice to proceed, and deviations.	Clause prescription revised to include simplified acquisitions in order to be more consistent with current contracting practices.
552.236–73 Subcontracts	Clause renumbered to streamline GSAR part 536. Previously was GSAR 552.236–82, Subcontracts.	Clause prescription revised to include simplified acquisitions in order to be more consistent with current contracting practices.
552.243–71 Equitable Adjustments	Clause text remains unchanged	Prescription for this existing agency unique clause is revised to include the changes clause for simplified acquisitions and the differing site conditions clause.

3. GSAR section 536.270 is added to provide agency regulations for options in construction contracts, as required by FAR part 17.2, Options. GSAR subpart 517.2 is revised to move all construction contract option requirements to GSAR section 536.270. In addition, procedures from the existing GSAR section 536.213 for construction options are incorporated into GSAR section 536.270 and are revised to better align with the FAR and to provide general application to both negotiated procurements and sealed bidding. Bringing these instructions into one area ensures consistency and provides better guidance to contracting officers when developing construction solicitations and contracts. As a result, one revised and three new provisions and clauses are incorporated into GSAR section 552.236. The provisions and clauses and a brief description are as follows:

Name and No.	Requirements	Prescription
552.236–74 Evaluation of Options	Agency unique provision for construction options.	Prescription written in plain language for ease of understanding.
552.236–75 Evaluation Exclusive of Options ..	Agency unique provision for construction options.	Prescription written in plain language for ease of understanding.
552.236–76 Basis of Award-Sealed Bidding Construction.	Revised title and provision numbering to better align the content. Previously was GSAR 552.236–73, Basis of Award-Construction Contracts.	Provision prescription revised to provide clarity.
552.236–77 Government's Right to Exercise Options.	Agency unique clause for construction options	Prescription written in plain language for ease of understanding.

4. GSAR section 546.704 is added to provide agency approval for use of FAR clause 52.246–21, Warranty of Construction.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 of September 30, 1993, Regulatory Planning and Review, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 6(b) of the E.O. requires the OMB Office of Information and Regulatory Affairs (OIRA) to review regulatory actions that have been identified as significant regulatory actions by the promulgating agency or OIRA. This proposed rule has not been determined to be a significant regulatory action and was therefore not subject to OIRA review. However, this rule is not a "major rule," as defined by 5 U.S.C. 804.

E.O. 13563 of January 18, 2011, Improving Regulation and Regulatory Review, supplements and reaffirms the principles of E.O. 12866 of September 30, 1993. Section 1(c) of E.O. 13563 directs agencies to "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." Accordingly, GSA offers the following summary of the costs and benefits associated with this proposed rule.

Construction Contract Administration Costs

The total costs associated with this rule are $895 thousand per year for contractors and $224 thousand per year for the Federal Government. These costs are attributable to GSA contracts for construction, dismantling, demolition, or removal of improvements. The estimated costs for contractors affected by this rule are limited to the time needed to comply with clause requirements as follows:

GSA construction contracts will be subject to GSAR clause 552.236–72, Submittals. This clause provides guidance to contractors regarding preparation, submission and resubmission of required contract submittal documents such as shop drawings, coordination drawings, and schedules. Compliance costs include the time needed to research and identify the required information, perform quality assurance checks, and transmit the documents. However, contractors will not necessarily have to acquire information technology tools or hire additional personnel to comply as these have been longstanding procedures in use in GSA construction contracts and contractors are familiar with and are currently complying with these practices. In addition, the clause is simplified, including removing the requirement for a specific number of prints and copies of various submittals. GSA estimates the costs for vendors holding these contracts to be around $895 thousand per year.

There are no other costs associated with this rule as no additional burden is imposed for other clause requirements.

Construction Contract Administration Benefits

This rule will save taxpayer dollars because it provides clarification on and consolidation of existing requirements for construction contracts that will allow for more consistency and efficiency in contracting for both businesses and contracting officers.

Much of the content in GSAR part 536 has not been updated since the 1980s, and does not reflect current contracting practices. For example, sealed bidding as detailed in GSAR 536.213 is rarely used now. This rule provides several updates to clarify procedures relevant to today's construction administration practices. This will in turn provide greater consistency across contracts and lower administrative costs for contractors.

In addition, GSAR coverage does not currently include internal policy and guidance issued in other forms such as Procurement Instructional Bulletins (PIBs) and Procurement Informational Letters (PILs). This rule brings these longstanding practices into the GSAR, consolidating policy into one area. As a result, contractors can expend less time and fewer resources to read, reconcile, and understand all the regulations relevant to their contract in order to fully comply with the requirements.

IV. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et seq.*, because the proposed rule will incorporate clauses that are currently in use in GSA construction solicitations and contracts and contractors are familiar with and are currently complying with these practices. However, since this is the first time these existing policies and procedures that impact the public are being published, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The IRFA has been prepared consistent with the criteria of 5 U.S.C. 604 and is summarized as follows:

> The proposed rule changes will apply to approximately 3,900 GSA construction contracts. Of these, approximately 3,500 (90 percent) construction contracts are held by small businesses. The proposed rule is unlikely to affect small businesses awarded GSA construction contracts as it implements clauses currently in use in construction solicitations and contracts. The proposed rule does not pose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. The agency determined that supplemental language is necessary for eight FAR clauses. No alternatives were determined that will accomplish the objectives of the rule. Bringing these regulations into the GSAR provides for transparency and allows for public comment. Bringing these regulations into the GSAR also consolidates policy into one area, allowing for more consistency and efficiency in contracting for both businesses and contracting officers.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (GSAR 2015–G503), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because the proposed rule contains information collection requirements. However, no additional burden is imposed on the public for most clauses, and there is some burden reduction.

One clause involves an existing information collection requirement that has never been previously recognized or vetted for public comment. Accordingly, the Regulatory Secretariat Division has submitted a request for approval of the existing information collection requirements to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The information collected is used by PBS to evaluate a contractor's proposals, negotiate contract modifications, review required submittals, evaluate a contractor's progress, and review payment requests during contract administration.

The impacts to the public for the following clauses are as follows:

The new clause at GSAR 552.211–13, Time Extensions, requires the contractor to submit a written request detailing an analysis to justify a time extension. However, the clause does not add burden to what is already estimated by a previous information collection for FAR clause 52.243–4, Changes (see OMB Control Number 9000–0026).

The new clause at GSAR 552.211–70, Substantial Completion, requires the contractor to submit a written notice of proposed substantial completion date for the construction work. However, the clause does not add burden to what is already estimated by a previous information collection for FAR clause 52.236–15, Schedules for Construction Contracts (see OMB Control Number 9000–0058).

The new clause at GSAR 552.232–5, Payments under Fixed-Price Construction Contracts, requires the contractor to use certain GSA forms to submit the information necessary for a complete payment request. However, the clause does not add burden to what is already estimated by previous information collections for GSAR 532.905–70, FAR clause 52.232–5, Payments under Fixed-Price Construction Contracts, and FAR clause 52.232–27, Prompt Payment for Construction Contracts (see OMB Control Numbers 3090–0080, 9000–0070, and 9000–0102).

The new clause at GSAR 552.236–15, Schedules for Construction Contracts, requires the contractor to identify a schedule of values, to provide updates specifically weekly or monthly, and to follow a critical path method in some cases. However, the clause does not add burden to what is already estimated by a previous information collection for FAR clause 52.236–15, Schedules (see OMB Control Number 9000–0058).

The new clause at 552.236–72, Submittals, represents a reduction in burden. The clause was previously GSAR 552.236–78, Shop Drawings, Coordination Drawings, and Schedules. The clause is simplified, including removing the requirement for a specific number of prints and copies of various submittals such as shop drawings, coordination drawings, and schedules. This simplification will ease the compliance burden for the contractor during contract administration. However, an information collection was never previously filed for this clause.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 3,758.

Responses per respondent: 1.

Total annual responses: 3.758.

Preparation hours per response: 8.

Total response burden hours: 30,064.

The new provision at GSAR 552.236–76, Basis of Award-Sealed Bidding Construction, removes the use of alternates in sealed bidding. The provision was previously GSAR 552.236–73, Basis of Award-Construction Contracts. The provision title and prescription are revised to provide clarity, and the provision regulations are simplified. This provision change will reduce the complexity to businesses during contract solicitation as bid sheet line items will be more clearly understood for pricing.

VI. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than November 8, 2016 to: GSAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat Division (MVCB), Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 3090–00XX, Construction Contract Administration, in all correspondence.

List of Subjects in 48 CFR Parts 501, 511, 517, 532, 536, 543, 546, and 552.

Government procurement.

Dated: September 9, 2016.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

Therefore, GSA proposes to amend 48 CFR parts 501, 511, 517, 532, 536, 543, 546, and 552 as set forth below:

■ 1. The authority citation for 48 CFR part 501 continues to read as follows:

Authority: 40 U.S.C. 121(c).

501.106 [Amended]

■ 2. Amend section 501.106 in the table by—

■ a. Removing GSAR reference "532.111(c)" and its corresponding OMB control number "3090–0080";

■ b. Removing from GSAR Reference "532.905–70" OMB control number "9000–0102" and adding "3090–0080" in its place;

■ c. Removing GSAR Reference "532.905–71" and its corresponding OMB control number "3090–0080";

■ d. Adding, in numerical sequence, GSAR references "552.211–13(a)" and "552.211–70(b)" and their corresponding OMB control numbers "9000–0026" and "9000–0058", respectively;

■ e. Adding, in numerical sequence, GSAR reference "552.232–5" and its corresponding OMB control numbers "3090–0080", "9000–0070", and "9000–0102"; and

■ f. Adding, in numerical sequence, GSAR references "552.236–15" and "552.236–72" and their corresponding OMB control numbers "9000–0058" and "3090–XXXX", respectively.

PART 511—DESCRIBING AGENCY NEEDS

■ 3. The authority citation for 48 CFR part 511 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 4. Revise section 511.404 to read as follows:

511.404 Contract clauses.

(a) *Supplies or services*—(1) *Shelf-life items.* The contracting officer shall use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production:

(i) The contracting officer shall insert 552.211–79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, substitute Alternate I when required by the program director.

(ii) The contracting officer shall insert 552.211–80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(2) *Stock replenishment contracts.* The contracting officer shall insert 552.211–81, Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing, and Shipment/Delivery clause at 552.211–83 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, the contracting officer shall use Alternate I.

(3) *Indeterminate testing time.* The contracting officer shall insert 552.211–83, Availability for Inspection, Testing, and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. If the contract is for stock items, the contracting officer shall use Alternate I.

(4) The contracting officer shall insert the clause at 552.211–94, Time of Delivery, in solicitations and contracts for supplies for the Stock Program when neither of the FAR delivery clauses (FAR 52.211–8 or 52.211–9) is suitable.

(b) *Construction.* (1) The contracting officer shall insert the clause at 552.211–10, Commencement, Prosecution, and Completion of Work, in solicitations and contracts when a fixed-price construction contract is contemplated.

(2) The contracting officer shall insert the clause at 552.211–70, Substantial Completion in solicitations and contracts when a fixed-price construction contract is contemplated.

■ 5. Add subpart 511.5, consisting of section 511.504, to read as follows:

Subpart 511.5—Liquidated Damages

511.504 Contract clauses.

(a) The contracting officer shall insert the clause at 552.211–12, Liquidated Damages-Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see FAR 11.501(a)).

(b) The contracting officer shall insert the clause at 552.211–13, Time Extensions, in solicitations and contracts for construction that use the clause at 552.211–12, Liquidated Damages—Construction.

PART 517—SPECIAL CONTRACTING METHODS

■ 6. The authority citation for 48 CFR part 517 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 7. Revise section 517.200 to read as follows:

517.200 Scope of subpart.

(a) Except as provided in paragraph (b) of this section, this subpart applies to contracts for supplies and services, including architect-engineer services.

(b) Policies and procedures for the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property are prescribed in 536.270. FAR subpart 17.2 and this subpart 517.2 do not apply to the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

■ 8. Revise section 517.202 to read as follows:

517.202 Use of options.

(a) Options may be used when they meet one or more of the following objectives:

(1) Reduce procurement lead time and associated costs.

(2) Ensure continuity of contract support.

(3) Improve overall contractor performance.

(4) Facilitate longer term contractual relationships with those contractors that continually meet or exceed quality performance expectations.

(b) An option is normally in the Government's interest in the following circumstances:

(1) There is an anticipated need for additional supplies or services during the contract term.

(2) When there is both a need for additional supplies or services beyond the basic contract period and the use of multi-year contracting authority is inappropriate.

(3) There is a need for continuity of supply or service support.

(c) An option shall not be used if the market price is likely to change substantially and an economic price adjustment clause inadequately protects the Government's interest.

PART 532—CONTRACT FINANCING

■ 9. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 10. Revise section 532.111 to read as follows:

532.111 Contract clauses for non-commercial purchases.

Insert the clause at 552.232–5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 11. The authority citation for 48 CFR part 536 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 12. Revise subpart 536.2 to read as follows:

Subpart 536.2—Special Aspects of Contracting for Construction

536.270 Options in construction contracting.
536.270–1 Use of options.
536.270–2 Solicitations.
536.270–3 Evaluation.
536.270–4 Exercise of options.
536.270–5 Solicitation provisions and contract clauses."

536.270 Options in construction contracting.

536.270–1 Use of options.

(a) Subject to the limitations in this subsection, contracting officers may include options in contracts when it is in the Government's interest.

(b) The scope of work in the base contract at award shall require the contractor to provide a discrete and fully functional deliverable. Options shall not be used to incrementally deliver work required to fulfill the requirements of the scope of work for the base contract.

(c) Contracting officers shall justify in writing the use of options.

(d) Including an option may be in the Government's interest when, in the judgment of the contracting officer—

(1) Additional work beyond the base contract is reasonably foreseeable;

(2) It would not be advantageous to award a separate contract;

(3) It would not be advantageous to permit an additional contractor to work on the same site;

(4) Services arising out of or relating to the underlying construction contract may be required during or after substantial completion of the scope of work. For instance, if building equipment (*e.g.,* mechanical and electrical equipment) will be installed under the construction contract, it may be advantageous to have the construction contractor maintain and service the equipment. In such an instance, the services performed may be included as an option to the underlying construction contract. Contracting officers shall ensure that the applicable clauses are included in any such option (*e.g.,* Service Contract Act); or

(5) It is otherwise justified.

(e) Options for construction work may provide for an economic price adjustment based on cost or price indexes of labor or materials (see FAR 16.203–4(d)). Subject to the approval of the HCA, the contracting officer may develop and insert a project-specific price adjustment clause into the solicitation.

536.270–2 Solicitations.

Solicitations containing options shall—

(a) Include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 536.270–5);

(b) State the period within which the options may be exercised; and

(c) State whether the basis of evaluation is inclusive or exclusive of the options (if exclusive, see 536.270–4(c)).

536.270–3 Evaluation.

For sealed bidding that includes options—

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and all options designated to be evaluated; and

(b) Before opening bids that include options, the contracting officer must determine, and record in the contract file, the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options does not exceed the amount offered for the base bid, the evaluated options, and the same combination of items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the options to be used.

536.270–4 Exercise of options.

(a) The contracting officer shall exercise options in writing within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining, in writing, that all the following conditions exist:

(1) Funds are available.

(2) The requirement covered by the option fulfills an existing Government need.

(3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.

(4) The contractor is not listed in the System for Award Management Exclusions (see FAR 9.405–1).

(5) The contractor's performance under the contract met or exceeded the Government's expectation for quality performance, unless another circumstance justifies an extended contractual relationship.

(6) Exercising the option is in accordance with the terms of the option.

(7) The option price is fair and reasonable, unless already determined as such (*e.g.,* at time of award).

(c) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302).

(d) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

536.270–5 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 552.236–74, Evaluation of Options, in solicitations for fixed-price construction contracts when the solicitation contains an option clause and options will be included in the evaluation for award purposes.

(b) Insert a provision substantially the same as the provision at 552.236–75, Evaluation Exclusive of Options, in solicitations for fixed-price construction contracts when the solicitation includes an option clause and options will not be included in the evaluation for award purposes.

(c) Insert a provision substantially the same as the provision at 552.236–76, Basis of Award-Sealed Bidding Construction, in solicitations for fixed-price construction contracts when contracting by sealed bidding. Use the provision with its Alternate I when the solicitation contains an option clause.

(d) Insert a clause substantially the same as the clause at 552.236–77, Government's Right to Exercise Options, in solicitations and contracts for construction that include options.

■ 13. Revise subpart 536.5 to read as follows:

Subpart 536.5—Contract Clauses

536.506 Superintendence by the contractor.
536.511 Use and possession prior to completion.
536.515 Schedules for construction contracts.
536.521 Specifications and drawings for construction.
536.570 Authorities and limitations.
536.571 Contractor responsibilities.
536.572 Submittals.
536.573 Subcontracts.

536.506 Superintendence by the contractor.

Insert the clause at 552.236–6, Superintendence by the Contractor, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.511 Use and possession prior to completion.

Insert the clause at 552.236–11, Use and Possession Prior to Completion, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.515 Schedules for construction contracts.

Insert the clause at 552.236–15, Schedules for Construction Contracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause—

(a) With its Alternate I when the contract amount is expected to be above the simplified acquisition threshold and a design-bid-build project delivery method will be followed; or

(b) With its Alternate II when the contract amount is expected to be above the simplified acquisition threshold and a design-build project delivery method will be followed.

536.521 Specifications and drawings for construction.

Insert the clause at 552.236–21, Specifications and Drawings for Construction, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.570 Authorities and limitations.

Insert the clause at 552.236–70, Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.571 Contractor responsibilities.

Insert the clause at 552.236–71, Contractor Responsibilities, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.572 Submittals.

Insert the clause at 552.236–72, Submittals, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.573 Subcontracts.

Insert the clause at 552.236–73, Subcontracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

PART 543—CONTRACT MODIFICATIONS

■ 14. The authority citation for 48 CFR part 543 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 15. Revise section 543.205 to read as follows:

543.205 Contract clauses.

The contracting officer shall insert 552.243–71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243–4, Changes, FAR 52.243–5, Changes and Changed Conditions, or FAR 52.236–2, Differing Site Conditions.

PART 546—QUALITY ASSURANCE

■ 16. The authority citation for 48 CFR part 546 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 17. Add section 546.704 to read as follows:

546.704 Authority for use of warranties.

FAR clause 52.246–21, Warranty of Construction, is approved by the agency for use in solicitations and contracts when a fixed-price construction contract is contemplated.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 18. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 19. Add section 552.211–10 to read as follows:

552.211–10 Commencement, Prosecution, and Completion of Work.

As prescribed in 511.404, insert the following clause:

Commencement, Prosecution, and Completion of Work (DATE)

FAR 52.211–10, Commencement, Prosecution, and Completion of Work, is supplemented as follows:

(a) The Contractor shall not commence work until the Contracting Officer issues a notice to proceed.

(b) Notwithstanding paragraph (a) above, the Contractor must submit any required safety plans before commencing any construction work.

(c) The Contractor shall diligently prosecute the work so as to achieve substantial completion of the work within the time specified in the contract. If the contract specifies different completion dates for different phases or portions of the work, the Contractor shall diligently prosecute the work so as to achieve substantial completion of such phases or portions of the work within the times specified.

(End of clause)

■ 20. Add sections 552.211–12 and 552.211–13 to read as follows:

552.211–12 Liquidated Damages—Construction.

As prescribed in 511.504, insert the following clause:

Liquidated Damages (DATE)

FAR 52.211–12, Liquidated Damages-Construction, is supplemented as follows:

(a) If the Contractor fails to achieve substantial completion of the work within the time specified in the contract, the Contractor shall be liable to the Government for liquidated damages at the rate specified for each calendar day following the required completion date that the work is not substantially complete.

(b) If the contract requires different completion dates for different phases or portions of the work, the Contractor shall be liable for liquidated damages at the specified rate for each calendar day following the required completion date that the phase or portion of work is not substantially complete. If a single rate is specified, the specified rate shall be apportioned between the different phases or portions of the work.

(c) If the Government elects to accept any portion of the work not specifically designated as a phase or portion of work with its own required completion date, the liquidated damage rate shall be apportioned between accepted work and uncompleted work, and the Contractor's liability for liquidated damages shall be computed accordingly.

(End of clause)

552.211–13 Time Extensions.

As prescribed in 511.504, insert the following clause:

Time Extensions (DATE)

FAR 52.211–13, Time Extensions, is supplemented as follows:

(a) If the Contractor requests an extension of the time for substantial completion, the Contractor shall base its request on an analysis of time impact using the project schedule as its baseline, and shall propose as a new substantial completion date to account for the impact. The Contractor shall submit a written request to the Contracting Officer setting forth facts and analysis in sufficient detail to enable the Contracting Officer to evaluate the Contractor's entitlement to an extension of time.

(b) The Contractor shall only be entitled to an extension of time to the extent that—

(1) Substantial completion of the work is delayed by causes for which the Contractor is not responsible under this contract; and

(2) The actual or projected substantial completion date is later than the date required by this contract for substantial completion.

(c) The Contractor shall not be entitled to an extension of time if the Contractor has not updated the project schedule in accordance with the contract.

(d) The Government shall not be liable for any costs to mitigate time impacts incurred by the Contractor that occur less than 30 calendar days after the date the Contractor submits a request for extension of time in compliance with this clause.

(End of clause)

■ 21. Add section 552.211–70 to read as follows:

552.211–70 Substantial Completion.

As prescribed in 511.404, insert the following clause:

Substantial Completion (DATE)

(a) *General.* (1) For the purposes of FAR 52.211–10, Commencement, Prosecution and Completion of Work, and FAR 52.211–12, Liquidated Damages-Construction, the work shall be deemed complete when it is ''substantially complete.''

(2) There may be different completion dates required for different phases or portions of the work, as established in the contract. However, the work shall be deemed ''substantially complete'' if and only if the Contractor has completed the work and related contract obligations in accordance with the contract documents, such that the Government may enjoy the intended access, occupancy, possession, and use of the entire work without impairment due to incomplete or deficient work, and without interference from the Contractor's completion of remaining work or correction of deficiencies in completed work.

(3) In no event shall the work be deemed ''substantially complete'' if all fire and life safety systems are not tested and accepted by the authority having jurisdiction, where such acceptance is required under the contract.

(4) Unless otherwise specifically noted, or otherwise clear from context, all references in the contract to ''acceptance'' shall refer to issuance of a written determination of substantial completion by the Contracting Officer.

(b) *Notice of Substantial Completion.* (1) With reasonable advance notice, the Contractor shall submit to the Contracting Officer a written proposal recommending a substantial completion date.

(2) If the Contracting Officer takes exception to the notice of substantial completion, the Contractor shall be entitled to a written notice of conditions precluding determination of substantial completion. The Contractor shall only be entitled to an extension of time to address such conditions if, and to the extent that, the Contracting Officer provides notice of such conditions more than 30 calendar days after receipt of the notice of substantial completion.

(c) *Acceptance of Substantial Completion.* (1) The Contracting Officer shall conduct inspections and make a determination of substantial completion within a reasonable time.

(2) Substantial Completion shall be established by the Contracting Officer's issuance of a written determination specifying the date upon which the work is substantially complete.

(d) *Contract Completion.* (1) The Contract is complete if and only if the Contractor has completed all work and related contract obligations, corrected all deficiencies and all punch list items, and complied with all conditions for final payment.

(2) The Contractor shall not be entitled to final payment or release of any retainage held by the Government until after contract completion. If the Contractor does not achieve contract completion within the time required by this contract, the Government shall be entitled, after providing notice to the Contractor, to complete any work remaining unfinished. The Contractor shall be liable to the Government for all costs incurred by the Government to complete such work.

(End of clause)

■ 22. Add sections 552.232–5 and 552.232–6 to read as follows:

552.232–5 Payments under Fixed-Price Construction Contracts.

As prescribed in 532.111, insert the following clause:

Payments Under Fixed-Price Construction Contracts (DATE)

FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, is supplemented as follows:

(a) Before submitting a request for payment, the Contractor shall, unless directed otherwise by the Contracting Officer, attend pre-invoice payment meetings, as scheduled, with the designated Government representative for the purpose of facilitating review and approval of payment requests. Payment meetings will be conducted and may be in person. The Contractor shall provide documentation to support the prospective payment request.

(b) The Contractor shall submit its invoices to the Contracting Officer, unless directed otherwise by the Contracting Officer. Separate payment requests shall be submitted for progress payments, payments of retainage, and partial or final payments.

(c) The Contractor shall use GSA Form 2419 *Certification of Progress Payments Under Fixed-Price Construction Contracts* to provide the certification required under FAR 52.232–5(c).

(d) The Contractor shall use GSA Form 1142 *Release of Claims* to provide the certification required under FAR 52.232–5(h).

(e) If an invoice does not meet the requirements of FAR 52.232–27 and GSAM 552.232–27, the Contracting Officer may return the invoice to the Contractor without payment for correction. If the Contracting Officer disputes the requested payment amount, the Government may pay the portion of the requested payment that is undisputed.

(f) GSA will not be obligated to issue final payment unless the Contractor has furnished to the Contracting Officer a release of claims against the Government relating to the contract, and submitted all required product warranties, as-built drawings, operating manuals, and other items as specified in the contract. The Contractor may reserve from the release specific claims only if such claims are explicitly identified with stated claim amounts.

(End of clause)

552.236–6 Superintendence by the Contractor.

As prescribed in 536.506, insert the following clause:

Superintendence by the Contractor (DATE)

The requirements of the clause entitled ''Superintendence by the Contractor'' at FAR 52.236–6, are supplemented as follows:

(a) The Contractor shall employ sufficient management and contract administration resources, including personnel responsible for project management, field superintendence, change order administration, estimating, coordination, inspection, and quality control, to ensure the proper execution and timely completion of the contract. The Contractor shall designate a principal of the firm or other senior management official to provide executive oversight and problem resolution resources to the project for the life of the contract.

(b) The Contractor shall employ, and require its subcontractors to employ, qualified personnel to perform the contract. The Government reserves the right to exclude, or remove from the site or building, any personnel for reasons of incompetence, carelessness, or insubordination, who violate rules and regulations concerning conduct on federal property, or whose continued employment on the site is otherwise deemed by the Government to be contrary to the public interest.

(c) The Contractor shall be responsible for coordinating all activities of subcontractors, including all of the following activities:

(1) Preparation of shop drawings produced by different subcontractors where their work interfaces or may potentially conflict or interfere.

(2) Scheduling of work by subcontractors.

(3) Installation of work by subcontractors.

(4) Use of the project site for staging and logistics.

(d) Repeated failure or excessive delay to meet the superintendence requirements by the Contractor may be deemed a default for the purposes of the termination for default clause.

(End of clause)

■ 23. Add section 552.236–11 to read as follows:

552.236–11 Use and Possession Prior to Completion.

As prescribed in 536.511, insert the following clause:

Use and Possession Prior to Completion (DATE)

Exercise by the Government of the right conferred by FAR 52.236–11 shall not relieve the Contractor of responsibility for completing any unfinished components of the work.

(End of clause)

■ 24. Add section 552.236–15 to read as follows:

552.236–15 Schedules for Construction Contracts.

As prescribed in 536.515, insert the following clause:

Schedules for Construction Contracts (DATE)

The requirements, of the clause entitled "Schedules for Construction Contracts" at FAR 52.236–15, are supplemented as follows:

(a) *Purpose.* The project schedule shall be a rational, reasonable, and realistic plan for completing the work, and conform to the requirements specified in this clause and elsewhere in the contract. The Contractor understands and acknowledges that the preparation and proper management of the project schedule is a material component of the contract.

(b) *Use of the schedule.* The Contracting Officer shall be entitled, but not required, to rely upon the project schedule to evaluate the Contractor's progress, evaluate entitlement to extensions of time, and determine the criticality or float of any activities described in such project schedule.

(c) *Submission.* Prior to notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule.

(d) *Milestones.* The project schedule shall incorporate milestone events specified in the contract, including, as applicable, notice to proceed, substantial completion, and milestones related to specified work phases and site restrictions. The project schedule shall also include Contractor-defined milestones to identify target dates for critical events, based upon the Contractor's chosen sequence of work.

(e) *Activities.* The project schedule shall depict all major activities necessary to complete the work.

(f) *Schedule of values.* (1) The Contractor shall prepare and submit for approval a cost breakdown of the Contract price, to be referred to as the "schedule of values", assigning values to each major activity necessary to complete the work.

(2) Values must include all direct and indirect costs, although a separate value for bond costs may be established.

(3) The schedule of values must contain sufficient detail to enable the Contracting Officer to evaluate applications for payment.

(g) *Conflicting terms.* (1) If at any time the Contracting Officer finds that the project schedule does not comply with any contract requirement, the Contracting Officer will provide written notice to the Contractor.

(2) Within 30 calendar days of written notice, or such other time as may be specified, from the Contracting Officer, the Contractor shall take one of the following actions:

(i) Revise the project schedule.

(ii) Adjust activity progress.

(iii) Provide sufficient information demonstrating compliance.

(3) If the Contractor fails to sufficiently address the Contracting Officer's exceptions to the project schedule, the Contracting Officer may—

(i) Withhold retainage until the project is substantially complete or until such time as the Contractor has complied with project schedule requirements; or

(ii) Terminate the contract for default.

(h) *Revisions to the schedule.* If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule weekly to reflect actual progress in completing the work, and submit the updated project schedule by the following Monday.

(End of clause)

Alternate I (DATE). As prescribed in 536.515(a), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

(c) *Submission.* Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) The project schedule shall depict all activities necessary to complete the work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(3) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(4) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule.* (1) The Contractor should anticipate that the initial submittal of the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken to the initial submittal. The Contractor understands and acknowledges that the purpose of the initial review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

Alternate II (DATE). As prescribed in 536–515(b), substitute the following paragraphs (c), (e), and (i) for paragraphs (c), (e), and (i) of the basic clause:

(c) *Submission.* (1) Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major design and construction activities. The project schedule may indicate construction activities in summary form prior to completion of final design documents.

(2) Within 30 calendar days of completion of final design documents, the Contractor shall submit a revised project schedule depicting all activities necessary to complete construction work activities, together with a written narrative describing the major work

activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(3) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

■ 25. Add section 552.236–21 to read as follows:

552.236–21 Specifications and Drawings for Construction.

As prescribed in 536.521, insert the following clause:

Specifications and Drawings for Construction (DATE)

The requirements of the clause entitled "Specifications and Drawings for Construction" at FAR 52.236–21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern.

(b) Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing.

(c) On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(d) Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(e) Standard details or specification drawings are applicable when listed, bound with the specifications, noted on the drawings, or referenced elsewhere in the specifications.

(1) Where notes on the specification drawings indicate alterations, such alterations shall govern.

(2) In case of difference between standard details or specification drawings and the specifications, the specifications shall govern.

(3) In case of difference between the standard details or specification drawings and the drawings prepared specifically for this contract, the drawings prepared specifically for this contract shall govern.

(f) Different requirements within the contract documents shall be deemed inconsistent only if compliance with both cannot be achieved.

(g) Unless otherwise noted, the drawings shall be interpreted to provide for a complete construction, assembly, or installation of the work, without regard to the detail with which material components are shown in the drawings.

(End of clause)

Alternate I (DATE). As prescribed in 536.521, add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to those included among the contract documents, and not to those produced by the Contractor pursuant to its responsibilities under the contract.

552.236–70 [Removed]

■ 26. Remove section 552.236–70.

552.236–71 [Redesignated as 552.236–70]

■ 27. Redesignate section 552.236–71 as section 552.236–70 and revise it to read as follows:

552.236–70 Authorities and Limitations.

As prescribed in 536.570, insert the following clause:

Authorities and Limitations (DATE)

(a) All work shall be performed under the general direction of the Contracting Officer. The Contracting Officer alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents. The Contracting Officer may designate contracting officer's representatives (CORs) to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the COR under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such COR additional power and authority to act for him or designate additional CORs, specifying the extent of their authority to act for him. A copy of each document vesting additional authority in a COR or designating an additional COR shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by a COR in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

(c) If the Contractor receives written notice from the Contracting Officer of non-compliance with any requirement of this contract, the Contractor must initiate action as may be appropriate to comply with the specified requirement as defined in the notice. In the event the Contractor fails to initiate such action within a reasonable period of time as defined in the notice, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of clause)

■ 28. Add new section 552.236–71 to read as follows:

552.236–71 Contractor Responsibilities.

As prescribed in 536.571, insert the following clause:

Contractor Responsibilities (DATE)

(a) The Contractor shall be responsible for compliance with applicable codes, standards and regulations pertaining to the health and safety of personnel during performance of the contract.

(b) Unless expressly stated otherwise in the contract, the Contractor shall be responsible for all means and methods employed in the performance of the contract.

(c) The Contractor shall immediately bring to the Contracting Officer's attention any hazardous materials or conditions not disclosed in the contract documents discovered by or made known to the Contractor during the performance of the contract.

(d) The Contractor shall be responsible for providing professional design services in connection with performance of the work or portions of the work only if this responsibility is expressly stated in the contract, and the contract documents provide the performance and design criteria that such services will be required to satisfy. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(f) Where drawings show work without specific routing, dimensions, locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(g) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(End of clause)

Alternate I (DATE). As prescribed in 536.571, delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), and (g) as follows:

(d) The Contractor shall be responsible for providing professional design services unless this responsibility is expressly excluded from the contract. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) The Contractor's responsibilities include the responsibilities of the Architect-Engineer Contractor, as specified in FAR 52.236–23.

(f) The Contractor shall include in all subcontracts that require professional design services express terms establishing GSA as a third party beneficiary. No other person shall be deemed a third party beneficiary of the contract.

(g) The Contractor shall determine whether the information contained in the contract documents complies with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

■ 29. Add section 552.236–72 to read as follows:

552.236–72 Submittals.

As prescribed in 536.572, insert the following clause:

Submittals (DATE)

(a) The Contractor shall prepare and submit all submittals as specified in the contract or requested by the Contracting Officer.

(1) Submittals may include: safety plans, schedules, shop drawings, coordination drawings, samples, calculations, product information, or mockups.

(2) Shop drawings may include fabrication, erection and setting drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(b) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, submittals shall be submitted to the Contracting Officer.

(c) The Contractor shall be entitled to receive notice of action on submittals within a reasonable time, given the volume or complexity of the submittals and the criticality of the affected activities to substantial completion as may be indicated in the project schedule.

(d) Review of submittals will be general and shall not be construed as permitting any departure from the contract requirements.

(e) The Contractor shall not proceed with construction work or procure products or materials described or shown in submittals until the submittal is reviewed. Any work or activity undertaken prior to review shall be at the Contractor's risk. Should the Contracting Officer subsequently determine that the work or activity does not comply with the contract, the Contractor shall be responsible for all cost and time required to comply with the Contracting Officer's determination. The Contracting Officer shall have the right to order the Contractor to cease execution of work for which submittals have not been reviewed. The Government shall not be liable for any cost or delay incurred by the Contractor attributable to the proper exercise of this right.

(f) The Contractor shall identify, in writing, all deviations or changes in resubmitted submittals. In the absence of such written notice, review of a resubmission shall not include or apply to such deviations or changes.

(End of clause)

Alternate I (DATE). As prescribed in 536.572, add the following paragraph to the basic clause:

(g) The Contractor shall submit design documents for review in accordance with PBS–P100. The Government shall review submittals for the limited purpose of verifying that the documents conform to the design criteria expressed in the contract documents.

552.236–73 through 81 [Removed]

■ 30. Remove sections 552.236–73 through 81.

552.236–82 [Redesignated as 552.236–73]

■ 31. Redesignate section 552.236–82 as section 552.236–73 and revise the introductory text to read as follows:

552.236–73 Subcontracts.

As prescribed in 536.573, insert the following clause:

* * * * *

■ 32. Add new sections 552.236–74 through 552.236–77 to read as follows:

552.236–74 Evaluation of Options.

As prescribed in 536.270–5(a), insert the following provision:

Evaluation of Options (DATE)

The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

552.236–75 Evaluation Exclusive of Options.

As prescribed in 536.270–5(b), insert the following provision:

Evaluation Exclusive of Options (DATE)

The Government will evaluate offers for award purposes by including only the price for the basic requirement. Options will not be included in the evaluation for award purposes.

(End of provision)

552.236–76 Basis of Award—Sealed Bidding Construction

As prescribed in 536.270–5(c), insert the following provision:

Basis of Award—Sealed Bidding Construction (DATE)

A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of provision)

Alternate I (DATE). As prescribed in 536.270–5(c), designate the basic provision as paragraph (a) and add the following paragraph to the basic provision:

(b) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base requirement plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options.

552.236–77 Government's Right to Exercise Options.

As prescribed in 536.270–5(d), insert the following clause:

Government's Right to Exercise Options (DATE)

(a) The Government may exercise any option in writing in accordance with the terms and conditions of the contract within ____ [*insert the period of time within which the Contracting Officer may exercise the option*]. Unless otherwise specified, options may be exercised within 90 calendar days of contract award.

(b) If the Government exercises the option, the contract shall be considered to include this option clause.

(End of clause)

■ 33. Amend section 552.243–71 by—

■ a. Revising the date of the clause,

■ b. Removing from paragraph (a) "FAR 52.243–4" and adding "FAR 52.243–4, the "Changes and Changed Conditions" clause prescribed by FAR 52.243–5," in its place; and

■ c. Revising paragraph (c).

The revisions read as follows:

552.243–71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

Equitable Adjustments (DATE)

* * * * *

(c) The proposal shall be submitted within the time specified in the "Changes", "Changes and Changed Conditions", or "Differing Site Conditions" clause, as applicable, or such other time as may reasonably be required by the Contracting Officer.

* * * * *

[FR Doc. 2016–21629 Filed 9–8–16; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 515, 538, and 552

[GSAR Case 2016–G506; Docket No. 2016–0016; Sequence No. 1]

RIN 3090–AJ75

General Services Administration Acquisition Regulation (GSAR); Federal Supply Schedule, Order-Level Materials

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to clarify the authority to acquire order-level materials when placing a task order or establishing a Blanket Purchase Agreement (BPA) against a Federal Supply Schedule (FSS) contract. This proposed rule seeks to provide clear and comprehensive implementation of the ability to acquire order-level materials through the FSS program to create parity between FSS contracts and commercial indefinite-delivery/indefinite-quantity (IDIQ) contracts, reduce the need to conduct less efficient procurement transactions, lower barriers of entry to the federal marketplace and make it easier to do business the federal government.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addressees shown below on or before November 8, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2016–G506 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments by searching for "GSAR Case 2016–G506." Select the link "Comment Now" that corresponds with GSAR Case 2016–G506. Follow the instructions provided on the screen. Please include your name, company name (if any), and "GSAR Case 2016–G506" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2016–G506, in all correspondence related to this case. All comments received will generally be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Leah Price, Procurement Analyst, at 703–605–2558, or Mr. Curtis Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2016–G506.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to establish special ordering procedures (per FAR 8.403(b)). These special ordering procedures clarify the authority to acquire order-level materials when placing an order or establishing a BPA against an FSS contract. Currently, most commercial indefinite-delivery/indefinite-quantity (IDIQ) contracts provide the flexibility to easily acquire order-level materials; however the FSS program does not. This proposed rule aims to create parity between the FSS program and other commercial IDIQs while also ensuring an appropriate set of controls or safeguards are put in place.

Improving the acquisition of order level materials through the FSS program was expressly cited in the Office of Federal Procurement Policy's roadmap for simplifying the federal procurement process. (See Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings, available at *https://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf.*) Providing the same flexibilities in the FSS program that are currently authorized for commercial IDIQ vehicles will help to reduce contract duplication and the associated administrative costs and inefficiencies for agencies. Simultaneously, it will reduce transaction costs for contractors, including small businesses, by eliminating the need for FSS contract holders to compete for and enter into additional contracts for this ancillary work. The Government Accountability Office (GAO) reports the costs of being on multiple contract vehicles ranged from $10,000 to $1,000,000 due to increased bid and proposal, and administrative costs.

This proposed rule would achieve parity for the FSS program by providing further clarification in the GSAR of regulatory changes made by the Federal Acquisition Regulatory Council in years past to overcome the holdings in a Court of Federal Claims decision, *ATA Defense Industries, Inc.* v. *United States*, 38 Fed. Cl. 489 (1997) and a GAO opinion, *Pyxis Corporation, B–282469; B–282469.2.* These decisions were issued at a time when there was no guidance in the FAR about open market items and served as impetus for opening Federal Acquisition Regulation (FAR) Case 1999–614, bringing the guidance from the FSS Contractor Guide into the FAR. The FAR Case stated:

It had been common practice to add "incidental" non-FSS items to FSS orders for administrative convenience. However, on July 15, 1999, the General Accounting Office (GAO) ruled in a protest that agencies "may no longer rely on the 'incidentals' test to justify the purchase of non-FSS items in connection with an FSS buy; where an agency buys non-FSS items, it must follow applicable acquisition regulations" (*Pyxis Corporation, B–282469; B–282469.2*). Therefore, it is proposed that a paragraph (d) be added to FAR 8.401, General, which would permit the addition of "open market (noncontract)" items to a FSS blanket purchase agreement or task or delivery order only if "(1) all applicable acquisition regulations have been followed (*e.g.*, publicizing ([FAR] Part 5), competition requirements ([FAR] Part 6), acquisition of commercial items ([FAR] Part 12), and contracting methods ([FAR] Parts 13, 14, and 15)); (2) the ordering office contracting officer has determined the price for the open market items is reasonable; and (3) the items are clearly labeled as open market (noncontract) items on the order."

This FAR Case was finalized and included in Federal Acquisition Circular 2001–08, effective July 29, 2002. With subsequent changes, this text moved from FAR 8.401 to its present location in FAR 8.402.

Separately, FAR case 2003–027, Additional Commercial Contract Types, published in the **Federal Register** at 71 FR 74667 on December 12, 2006, expressly provided the authority to acquire order-level materials under commercial contracts. The case extended this authority to all commercial IDIQ contract vehicles, including contracts awarded pursuant to FAR part 12 and orders awarded pursuant to FAR subparts 16.5 and 8.4.

Alternate I of FAR clause 52.212–4 Contract Terms and Conditions—Commercial Items was explicitly developed for contract vehicles where Time and Materials (T&M) or Labor-Hour (L–H) orders are contemplated. It defines "materials" to include direct materials, other direct costs, subcontracts, and indirect costs, and provides a means to acquire these materials within the scope of the FSS contract. It includes detailed instructions for the handling of each, none of which involves the competitive procedures required by FAR 8.402(f).

Despite this clarification, FAR 8.402(f), which addresses "open market items" that are not on FSS, has been widely interpreted to mean that ordering activity Contracting Officers must conduct a separate open market competition for any and all materials not specifically awarded on the underlying FSS contract. As a result, FSS ordering activities have struggled with how to properly handle orders for which the exact items and quantities of materials is unknown. Years of confusion have, in turn, led to the creation of elaborate workarounds and the application of inconsistent policies and procedures.

Providing clear and comprehensive implementation of this authority in the GSAR will result in parity regarding the ability to acquire order level materials from the FSS program and other commercial IDIQs. As a result, agencies will be able to further utilize the FSS program to meet their requirements rather than conducting separate open market procurements or further contributing to contract duplication through creating new commercial IDIQs that have a similar scope to existing FSS offerors, but that allow for order level materials.

II. Discussion and Analysis

Amendments to GSAR parts 515, 538, and 552 are proposed by this rule. Specifically, GSA is proposing the following amendments:

- Add to GSAR 515.408(c) that "offerors are not required to complete the commercial sales practices disclosure for order-level materials.
- Add a new GSAR subpart 538.71, Order-Level Materials, which clarifies the authority to acquire order-level materials when placing a task order or establishing a BPA against an FSS contract. This subpart defines order-level materials and lists the applicable Federal Supply Schedules that authorized the use of order-level materials. GSA will issue guidance to its contracting officers outlining the procedures for structuring these Federal Supply Schedules and how to administer FSS contracts where order-level materials are authorized.
- Add instructions in new GSAR subpart 538.71 for GSA contracting officers to use FAR clause 52.212–4 *Alternate I* in Federal Supply Schedules authorizing the use of order-level materials, with the following instructions for the clause fill-ins:
  - ○ Insert "Each order must list separately subcontracts for services excluded from the FSS Schedule Hourly Rates" in FAR clause 52.212–4(e)(iii)(D).
  - ○ Insert "Each order must list separately elements of other direct charge(s) for that order." in FAR clause 52.212–4(i)(1)(ii)(D)(1).
  - ○ Insert "none" in FAR clause 52.212–4(i)(1)(ii)(D)(2).
  - ○ GSA is especially interested in comments on the clause fill-in instructions.
- Add a new GSAR clause 552.238–XX, Special Ordering Procedures for the Acquisition of Order-Level Materials, which clarifies the authority to acquire order-level materials when placing a task order or establishing a BPA against an FSS contract. This new clause should be read as a special ordering procedure, as authorized in FAR 8.403(b). Operationally, it should be understood as an addition to the ordering procedures outlined in FAR 8.404(h). This new clause includes the special ordering procedures to be used when order-level materials are authorized controls that GSA is establishing when authorizing the use of "order-level materials". These controls include—
- Prohibiting order-level materials from being the primary basis of the order;
- Limiting the total value of order-level materials to 33 percent of the overall order value;
- Requiring order-level materials to be purchased under a separate Special Item Number (SIN) to enable GSA to monitor the sales for order-level materials and evaluate the appropriate usage;
- Requiring the ordering activity to follow FAR 8.404(h) prior to placing an order including order-level materials;
- Requiring contractors proposing order-level materials as part of a solution to submit a minimum of three quotes for each order-level material above the micro-purchase threshold. One of these three quotes may include materials furnished by the contractor under FAR 52.212–4 *Alternate I* (i)(1)(ii)(A). The contractor shall submit the information to the ordering activity contracting officer or provide rationale for why three quotes cannot be obtained;
- Requiring the ordering activity contracting officer to determine all prices for order-level materials are fair and reasonable prior to placing an order; and
- Including controls to ensure any ceiling increase has been appropriately justified and approved in accordance with FAR 8.405–6.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and

Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S. 601, *et seq.*, because the rule merely clarifies the authority to acquire order-level materials when placing a task order or establishing a BPA against an FSS contract; however, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

> This proposed rule amends the GSAR to clarify the authority to acquire order-level materials when placing a task order or establishing a BPA against an FSS contract. Currently, most commercial indefinite-delivery/indefinite-quantity (IDIQ) contracts provide the flexibility to easily acquire order-level materials; however the FSS program does not.
>
> Currently there are 13,850 small businesses that have GSA Schedule contracts. While the rule is expected to have a beneficial impact on these contractors by reducing bid and proposal preparation costs and simplifying the process for selling order-level materials to FSS customers, GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies the authority to acquire order-level materials when placing a task order or establishing a BPA against an authorized FSS contract.
>
> The proposed rule imposes no reporting, recordkeeping, or other information collection requirements.
>
> The rule does not duplicate, overlap, or conflict with any other Federal rules.
>
> There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

The Regulatory Secretariat Division will be submitting a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2016–G506) in correspondence.

V. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 515, 538, and 552

Government procurement.

Dated: September 2, 2016.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 515, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 515, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 515—CONTRACTING BY NEGOTIATION

■ 2. Amend section 515.408 by adding a sentence to the end of paragraph (c) introductory text to read as follows:

515.408 Solicitation provisions and contract clauses.

* * * * *

(c) * * * Offerors are not required to complete the commercial sales practices disclosure for order-level materials (See subpart 538.71).

* * * * *

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 3. Add subpart 538.71 to read as follows:

Subpart 538.71—Order-Level Materials

538.7100 Definitions.
538.7101 Applicability.
538.7103 Contract clauses.

Subpart 538.71—Order-Level Materials

538.7100 Definitions.

Order-level materials means supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract, when the supplies and/or services are not known at the time of Schedule contract award. The prices of order-level materials are not established in the FSS contract. Order-level materials are not open market items discussed in FAR 8.402(f).

538.7101 Applicability.

Order-level materials are authorized under all of the following:

(a) Federal Supply Schedule 03 FAC.
(b) Federal Supply Schedule 56.
(c) Federal Supply Schedule 70.
(d) Federal Supply Schedule 71.
(e) Federal Supply Schedule 84.
(f) Professional Services Schedule 99.
(g) Federal Supply Schedule 738X.

538.7103 Contract clauses.

(a) Use FAR clause 52.212–4 *Alternate I* in all Federal Supply Schedules authorized for the acquisition of order-level materials (see 538.7101). Use the following language for the clause fill-in:

(1) Insert "Each order must list separately subcontracts for services excluded from the FSS Hourly.

(2) Insert "Each order must list separately the elements of other direct charge(s) for that order" in (i)(1)(ii)(D)(1).

(3) Insert "none" in (i)(1)(ii)(D)(2).

(b) Use 552.238–XX, Special Ordering Procedures for the Acquisition of Order-Level Materials in all Federal Supply Schedules authorized for the acquisition of order-level materials (see 538.7101).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 552.238–XX to read as follows:

552.238–XX Special Ordering Procedures for the Acquisition of Order-Level Materials.

As prescribed in 538.7103(b), insert the following clause:

Special Ordering Procedures for the Acquisition of Order-Level Materials (DATE)

(a) *Order-level materials* means supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS BPA, when the supplies and/or services are not known at the time of Schedule contract award. The prices of order-level materials are not established in the FSS contract. Order-level materials that are acquired following the procedures in paragraph (d) of this clause are not open market items discussed in FAR 8.402(f).

(b) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS or for some Special Item Numbers (SINs) within a Schedule.

(c) The procedures in FAR Subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR Subpart 8.4, this clause takes precedence.

(d) Procedures for including order-level materials when placing an individual task or delivery order against an FSS contract or FSS Blanket Purchase Agreement (BPA).

(1) The procedures discussed in FAR 8.402(f) do not apply when placing task and delivery orders for order-level materials.

(2) Order-level materials are included in the definition of the term "materials" in

GSAR clause 552.212–4 *Alternate I,* and therefore all provisions of clause 552.212–4 *Alternate I* that apply to "materials" also apply to order-level materials. The ordering activity shall follow procedures under the Federal Travel Regulation and FAR Part 31 when order-level materials include travel.

(3) Order-level materials shall only be acquired in direct support of an order and not as the primary basis.

(4) The cumulative value of order-level materials awarded under an FSS order shall not exceed 33 percent of the total value of the order.

(5) All order-level materials shall be placed under the Order-Level Materials SIN.

(6) Prior to the placement of an order that includes order-level materials, the ordering activity shall follow procedures in FAR 8.404(h).

(7) To support the price reasonableness of order-level materials, the contractor proposing order-level materials as part of a solution shall submit a minimum of three quotes obtained by the contractor for each order-level material above the micro-purchase threshold. One of these three quotes may include materials furnished by the contractor under FAR 52.212–4 *Alternate I* (i)(1)(ii)(A) If the contractor cannot obtain three quotes, the contractor shall provide the rationale for why they cannot obtain three quotes to support the contracting officer's determination in (d)(7) of this section.

(8) The ordering activity contracting officer must make a determination that prices for all order-level materials are determined fair and reasonable. The ordering activity contracting officer may base their determination on a comparison of the quotes received in response to the task or delivery order solicitation or other relevant pricing information available.

(9) Prior to an increase in the ceiling price of order-level materials above the micro-purchase threshold, the ordering activity contracting officer shall—

(i) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government and obtain the approval at the levels described in FAR 8.405–6(d); or

(ii) Follow the procedures at FAR 8.405–6 for a change that modifies the general scope of the order.

(10) In accordance with GSAR clause 552.215–71 Examination of Records by GSA, GSA has the authority to examine the contractor's records for compliance with the pricing provisions in FAR clause 52.212–4 *Alternate I,* to include examination of any books, documents, papers, and records involving transactions related to the contract for overbillings, billing errors, and compliance with the IFF and the Sales Reporting clauses of the contract.

(11) Order-level materials are exempt from the following clauses:

(i) 552.216–70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

(ii) 552.238–71 Submission and Distribution of Authorized FSS Schedule Pricelists.

(iii) 552.238–75 Price Reductions.

(End of Clause)

[FR Doc. 2016–21610 Filed 9–8–16; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2005–23151]

RIN 2126–AA95

Medical Review Board Task Report on Insulin Treated Diabetes Mellitus and Commercial Motor Vehicle Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: In May 2015, FMCSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to allow drivers with stable, well-controlled insulin-treated diabetes mellitus (ITDM) to be qualified to operate commercial motor vehicles (CMVs) in interstate commerce. The comment period closed on July 6, 2015 and the Agency received over 1,250 comments. In that same month, FMCSA requested the Medical Review Board (MRB) to provide the Agency with advice by reviewing and analyzing the comments and providing recommendations to FMCSA for its consideration. The Agency announces the availability of the MRB's report and requests comments on the MRB recommendations. The Final MRB Task 15–01 Report is posted in the docket at FMCSA–2005–23151.

DATES: Comments must be received on or before November 8, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2005–23151 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include FMCSA and docket number FMCSA–2005–23151. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, 1200 New Jersey Ave. SE., Washington, DC 20590, or by phone at (202) 366–4001 or by email at *FMCSAMedical@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2005–23151), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2005–23151, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider these comments, in addition to the comments submitted in response to the NPRM, in determining how to proceed with this rulemaking.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2005–23151, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

II. Background

Diabetes mellitus is a disease manifested by the body's inability to maintain normal function of insulin, a substance that controls glycemic levels in the blood. Diabetes presents a major health challenge, particularly those who drive CMVs in interstate commerce. Under 49 CFR 391.41(b)(3), a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. Since 2003, FMCSA has maintained an exemption program for individuals that use insulin to treat their diabetes mellitus, that allows them to drive in interstate commerce if their diabetes is stable and they meet criteria of the program. 68 FR 52441 (Sept. 3, 2003), as revised, 70 FR 67777 (Nov. 8, 2005).

In May 2015, FMCSA issued an NPRM in the **Federal Register** to allow drivers with stable, well-controlled ITDM to be qualified to operate CMVs in interstate commerce. The NPRM would enable individuals with ITDM to obtain a Medical Examiner's Certificate (MEC) from a Certified Medical Examiner (CME) at least annually in order to operate in interstate commerce as long as evidence is presented by the treating clinician who prescribes insulin documenting that the driver's condition is stable and well-controlled. The comment period on the NPRM closed on July 6, 2015, and the Agency received more than 1,250 comments.

MRB Tasking

The MRB was established to provide FMCSA with medical advice and recommendations on medical standards and guidelines for the physical qualifications of operators of CMVs, medical examiner education, and medical research. 49 U.S.C. 31149(a)(1). The MRB, in view of its statutory creation and advisory function, is chartered by the Department of Transportation as an advisory committee under the provisions of the Federal Advisory Committee Act. 5 U.S.C. App. See *http://www.facadatabase.gov/committee/committee.aspx?cid=2084&aid=47.* See also *Announcement of Establishment of the Federal Motor Carrier Safety Administration Medical Review Board,* 70 FR 57642 (Oct. 3, 2005). The members of the MRB are appointed by the Secretary to reflect expertise in a variety of medical specialties relevant to the driver fitness requirements of FMCSA. 49 U.S.C. 31149(a)(2).

In an effort to assist in the development of the final rule, on July 15, 2015, FMCSA requested advice from the MRB for the Agency to consider. Specifically, FMCSA asked the members to review and analyze all comments from medical professionals and associations, and identify factors the Agency should consider when making a decision about the next steps in the diabetes rulemaking. A public meeting to discuss this matter was held by the MRB on July 21 and 22, 2015. The Agency received the MRB's final report on September 1, 2015. Details of the meeting, including the original task, final report and supporting materials used by the MRB are posted on the Agency's public Web site: *https://www.fmcsa.dot.gov/medical-review-board-mrb-meeting-topics.*

MRB Final Report

The MRB's final report is available in the docket for this rulemaking (in addition to being available on the Agency's public Web site). The final report contains a number of detailed recommendations for FMCSA to consider as it develops a final rule. The Agency believes that public comment on the recommendations will assist it in evaluating the advice it has received from the MRB. Comments must be limited to addressing the recommendations in the MRB final report. A summary of the report's major recommendations is set out below:

The MRB recommended that ITDM drivers be medically disqualified unless they meet the following requirements demonstrating their stable, well-controlled ITDM:

1. The driver must provide an *FMCSA Drivers With Insulin Treated Diabetes Mellitus Assessment Form* (set out in the recommendations) to a medical examiner that has been completed and signed by the treating clinician. The treating clinician must be a Doctor of Medicine, a Doctor of Osteopathy, a Nurse Practitioner or a Physician's Assistant who prescribed insulin to the driver and is knowledgeable regarding the treatment of diabetes.

2. The driver must receive a complete ophthalmology or optometry exam, including dilated retinal exam, at least every 2 years documenting the presence or absence of retinopathy/macular edema and the degree of retinopathy and/or macular edema if present (using the International Classification of Diabetic Retinopathy and Diabetic Macular Edema).

The MRB recommended that medical examiners be allowed to certify an ITDM driver as medically qualified for a time period of no longer than 1 year only if the driver has not experienced any of the 8 disqualifying factors below (which the MRB believes should be listed in 49 CFR 391.46):

1. Any episode of severe hypoglycemia within the previous 6 months.

2. Blood sugar less than 60 milligrams per deciliter (mg/dL) demonstrated in current glucose logs.

3. Hypoglycemia appearing in the absence of warning symptoms (*i.e.,* hypoglycemic unawareness).

4. An episode of severe hypoglycemia, blood sugar less than 60 mg/dl, or hypoglycemic unawareness within the previous 6 months; the driver should be medically disqualified and must remain disqualified for at least 6 months.

5. Uncontrolled diabetes, as evidenced by Hemoglobin A1c (HbA1c) level greater than 10 percent. A driver could be reinstated when HbA1c level is less than or equal to 10 percent.

6. Stage 3 or 4 diabetic retinopathy; a driver should be permanently disqualified.

7. Signs of target organ damage; a driver should be disqualified until the

matter is resolved by treatment, if possible.

8. Inadequate record of self-monitoring of blood glucose; a driver should be disqualified for inadequate records until the driver can demonstrate adequate evidence of glucose records (minimum 1 month).

In addition, the MRB stated that, if a driver is medically disqualified due to not meeting the ITDM criteria listed above, the driver should remain disqualified for at least 6 months.

Comments Requested

Comments are requested on any and all of the recommendations provided in the advisory final report from the Medical Review Board but only on those recommendations. To the extent possible, comments should include supporting materials, such as, for example, data analyses, studies, reports, or journal articles. FMCSA will consider these comments, in addition to the comments submitted in response to the NPRM, in determining how to proceed with this rulemaking.

Issued on: August 30, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–21724 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2016–0099; 4500030113]

RIN 1018–BA74

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Guadalupe Fescue

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list *Festuca ligulata* (Guadalupe fescue), a plant species from the Chihuahuan Desert of west Texas and Mexico, as an endangered species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species.

DATES: We will accept comments received or postmarked on or before November 8, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 24, 2016

ADDRESSES: You may submit comments by one of the following methods: (1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2016–0099, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2016–0099, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd., Suite 200, Austin, TX 78758; telephone 512–490–0057; or facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best available scientific and commercial data and will be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Guadalupe fescue's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for soils, reproduction, and associated species;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified above in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are seeking the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the natural history, habitats, distribution, and ecology of Guadalupe fescue. The peer reviewers are currently reviewing the Species Status Assessment (SSA Report) for Guadalupe fescue, which will inform our determination.

Previous Federal Action

On January 9, 1975, as directed by the Act, the Secretary for the Smithsonian Institution submitted a report to Congress on potential endangered and threatened plant species of the United States (Smithsonian 1975, entire). The report identified more than 3,000 plant species as potentially either endangered or threatened, including *Festuca ligulata* (Guadalupe fescue). On July 1, 1975, we published in the **Federal Register** (40 FR 27824) our notification that we considered this report to be a petition to list the identified plants as either endangered or threatened under the Act. The 1975 notice solicited information from Federal and State agencies, and the public, on the status of the species.

On December 15, 1980, we published a comprehensive notice of review of native plants (45 FR 82480) that included Guadalupe fescue as a Category 2 candidate species. Category 2 candidates were taxa for which information then in the possession of the Service indicated that proposing to list as endangered or threatened species was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not then available to support proposed rules. We retained the Category 2 status for Guadalupe fescue in updated notices of review of vascular plant taxa on September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). In a notice of review published on September 30, 1993 (58 FR 51144), we revised the status of Guadalupe fescue to a Category 1 candidate, meaning that the Service had on file sufficient information on biological vulnerability and threat(s) to support a proposal to list it as an endangered or threatened species, but that a proposed rule had not yet been issued because this action was precluded at that time by other listing activities. The candidate notice of review published on February 28, 1996 (61 FR 7596), eliminated categories within candidate species, and Guadalupe fescue was included as a candidate with a listing priority number of 8. The listing priority number was revised to 11 on October 25, 1999 (64 FR 57534), based on the commitment of Big Bend National Park to manage habitat for the species through a candidate conservation agreement (CCA). On May 4, 2004 (69 FR 24876), we indicated that Guadalupe fescue remained a candidate following a re-submitted petition. We have retained the candidate status for Guadalupe fescue, with a listing priority number of 11, in all subsequent notices of review (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015).

Elsewhere in this issue of the **Federal Register**, we propose to designate critical habitat for Guadalupe fescue under the Act.

Background

Staff of the Austin Ecological Services Field Office developed the SSA Report for Guadalupe fescue, which is an evaluation of the best available scientific and commercial data on the status of the species, including the past, present, and future threats to this species and the effect of conservation measures. The SSA Report and other materials related to this proposal are available online at *http://www.regulations.gov,* under Docket No. FWS–R2–ES–2016–0099, and on the Southwest Region Ecological Services Web site at: *https://www.fws.gov/southwest/es/AustinTexas/ESA_Our_species.html.*

The SSA Report (Service 2016) is based on a thorough review of the natural history, habitats, ecology, populations, and range of Guadalupe fescue. The SSA Report analyzes individual, population, and species requirements; factors affecting the species' survival; and current conditions to assess the species' current and future viability in terms of resiliency, redundancy, and representation. We define viability as the ability of a species to maintain populations over a defined period of time.

Resiliency refers to the population size necessary to endure stochastic environmental variation (Shaffer and Stein 2000, pp. 308–310). Resilient populations are better able to recover from losses caused by random variation, such as fluctuations in recruitment (demographic stochasticity), variations in rainfall (environmental stochasticity), or changes in the frequency of wildfires.

Redundancy refers to the number and geographic distribution of populations or sites necessary to endure catastrophic events (Shaffer and Stein 2000, pp. 308–310). As defined here, catastrophic events are rare occurrences, usually of finite duration, that cause severe impacts to one or more populations. Examples of catastrophic events include tropical storms, floods, prolonged drought, and unusually intense wildfire. Species that have multiple resilient populations distributed over a larger landscape are more likely to survive catastrophic events, since not all populations would be affected.

Representation refers to the genetic diversity, both within and among populations, necessary to conserve long-term adaptive capability (Shaffer and Stein 2000, pp. 307–308). Species with greater genetic diversity are more able to adapt to environmental changes and to colonize new sites.

Summary of Biological Status and Threats

Guadalupe fescue is a short-lived perennial grass species found only in a few high mountains of the Chihuahuan Desert, west of the Pecos River in Texas and in the State of Coahuila, Mexico. These "sky island" habitats are conifer-oak woodlands above 1,800 meters (m) (5,905 feet (ft)) elevation. The species has been reported in only six sites. It was first collected in 1931, in the Guadalupe Mountains, Culberson County, Texas, and in the Chisos Mountains, Brewster County, Texas; these sites are now within Guadalupe Mountains National Park and Big Bend National Park, respectively. Guadalupe fescue was documented near Fraile, southern Coahuila, in 1941; in the Sierra la Madera, central Coahuila, in 1977; and at two sites in the Maderas del Carmen Mountains of northern Coahuila in 1973 and 2003. The last three sites are now within protected natural areas (''areas naturales protegidas'' (ANP)) designated by the Mexican federal government.

In the United States, known populations of Guadalupe fescue have experienced significant declines. Guadalupe fescue was last observed in the Guadalupe Mountains in 1952; this population is presumed extirpated. Researchers from Texas Parks and Wildlife Department and Big Bend National Park have quantitatively monitored plots within the Chisos Mountains population over a 22-year period. Our analysis of these data indicates that the population within the plots (about 25 to 50 percent of the total population) has decreased significantly over time, from a high of 125 and 127 individuals in 1993 and 1994, to 47 individuals in 2013 and 2014. Little information is available for the known populations in Mexico. Valdes-Reyna (2009, pp. 13, 15) confirmed that one population in the Maderas del Carmen mountains is extant. This population had several hundred individuals in 2003 (Big Bend National Park and Service 2008), and is protected within ANP Maderas del Carmen. The status of the other three Coahuilan populations remains unknown.

To estimate the amount and distribution of potential Guadalupe fescue habitat, we created maps of conifer-oak forests in the Chihuahuan Desert at elevations greater than 1,800 m. Since larger habitat areas may be more suitable, we restricted this model to areas greater than 200 hectares (ha) (494 acres (ac)). This model reveals that northern Mexico has 283 areas of potential habitat totaling 537,998 ha (over 1.3 million ac), compared to 20 such areas totaling 27,881 ha (68,894 ac) in Texas. Thus, about 95 percent of the potential habitat is in Mexico. However, we do not have information confirming that any of these areas actually contain Guadalupe fescue.

Monitoring suggests that the Chisos Mountains population has decreased in size; however the data indicate that survival rates within this monitored population have increased. These inverse trends may be explained by a recruitment rate (establishment of new individuals) that is too low to sustain the population. We do not know why the recruitment rate at the Chisos population is low. We have no information about the species' genetic viability, within-population and within-species genetic differentiation, chromosome number, or breeding system. However, since grasses are wind-pollinated, small, widely-scattered populations produce few if any seeds from out-crossing (pollination by unrelated individuals). Many perennial grasses, including some *Festuca* species, are obligate out-crossers. If Guadalupe fescue is an obligate out-crosser, the sparse Chisos population would produce few seeds; if it is not an obligate out-crosser, it is probably highly inbred and may suffer from inbreeding depression. Although the minimum viable population (MVP) size has not yet been calculated for Guadalupe fescue, we can estimate its MVP by comparison to species with similar life histories (*i.e.,* surrogates) for which MVPs have been calculated, using the following guideline adapted from Pavlik (1996, p. 137). Through this comparison, we estimate that populations of Guadalupe fescue should have at least 500 to 1,000 individuals for long-term population viability (SSA Report, pp. 17–18).

One factor potentially negatively affecting the existing population in the Chisos Mountains is the loss of regular wildfires. Periodic wildfire and leaf litter reduction may be necessary for long-term survival of Guadalupe fescue populations, although this has not been investigated. Historically, wildfires occurred in the vicinity of the Chisos population at least 10 times between 1770 and 1940 (Moir and Meents 1981, p. 7; Moir 1982, pp. 90–98; Poole 1989, p. 8; Camp *et al.* 2006, pp. 3–6, 14–23, 59–61). However, the last major fire there was more than 70 years ago, due to fire suppression within the National Park. The long absence of fire and the resulting accumulation of fuels also increase the risk of more intense wildfire, which could result in the loss of the remaining Guadalupe fescue population in the United States.

Other factors that may affect the continued survival of Guadalupe fescue include the genetic and demographic consequences of small population sizes and isolation of its known populations; livestock grazing; trail runoff; competition from invasive species; effects of climate change, such as higher temperatures and changes in the amount and seasonal pattern of rainfall; and fungal infection of seeds. Big Bend National Park has minimized the potential threat of trampling from humans and pack animals by restricting visitors and trail maintenance crews to established trails and through visitor outreach.

The Service, Big Bend National Park, and Guadalupe Mountains National Park established CCAs for the Guadalupe fescue in 1998 and 2008. The objectives of these 10-year agreements include monitoring and surveys, seed and live plant banking, fire and invasive species management, trail management, staff and visitor education, establishment of an advisory team of species experts, and cooperation with Mexican agencies and researchers to conserve the known populations of Guadalupe fescue and search for new ones. Research objectives include investigations of fire ecology, habitat management, genetic structure, reproductive biology, and reintroduction.

Based on the best available information, we know of only two extant populations of Guadalupe fescue. The Chisos Mountains population is far smaller than our estimated MVP level, and despite protection, appropriate management, and periodic monitoring by the National Park Service, it has declined between 1993 and 2014. The other extant population, at ANP Maderas del Carmen in northern Coahuila, Mexico, may have exceeded our estimated MVP level as recently as 2003, and the site is managed for natural resources conservation. Unfortunately, we possess very little information about the current status of the species at Maderas del Carmen and throughout Mexico. Our analysis revealed that a large amount of potential habitat exists in northern Mexico. Thus, it is possible that other undiscovered populations of Guadalupe fescue exist in northern Mexico, and that the overall status of the species is more secure than we now know. Nonetheless, the Service has to make a determination based on the best available scientific data, which currently confirm only one extant population in Mexico.

Determination

Standard for Review

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a) of the Act, the Secretary is to make endangered or threatened determinations required by section 4(a)(1) solely on the basis of the best scientific and commercial data available to her after conducting a review of the status of the species and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is endangered or threatened are provided in section 3 of the Act. An endangered species is any species that is ''in danger of extinction throughout all or a significant portion of its range." A threatened species is any species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Per section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definition of endangered or of threatened, we determine whether any species is an endangered species or a threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Our determination must also consider certain conservation measures for the species.

The fundamental question before the Service is whether the species warrants protection as endangered or threatened under the Act. To make this determination, we evaluated the projections of extinction risk, described in terms of the condition of current and future populations and their distribution (taking into account the risk factors and their effects on those populations). For any species, as population condition declines and distribution shrinks, the species' extinction risk increases and overall viability declines.

Summary of Analysis

We documented in our SSA Report that only two extant populations of Guadalupe fescue are currently known. The only extant population in the United States, in the Chisos Mountains at Big Bend National Park, has declined in abundance since 1993. Only 47 individuals were observed there in 2014, which is far less than an estimated MVP size of 500 to 1,000 individuals based on species with similar life histories. The other extant population, in the ANP Maderas del Carmen in Coahuila, had several hundred individuals in 2003, and was confirmed extant in 2009 with no population estimate. Three other historically known populations in remote areas of Coahuila, Mexico, have not been monitored in at least 39 years, and their statuses remain unknown.

We find that several factors reduce the viability of Guadalupe fescue, including: Changes in the wildfire cycle and vegetation structure of its habitats, trampling from humans and pack animals, trail runoff, and competition from invasive species (Factor A); grazing by livestock and feral animals of Guadalupe fescue plants (Factor C); and the genetic and demographic consequences of small population sizes, isolation of its known populations, and potential impacts of climate changes, such as higher temperatures and changes in the amount and seasonal pattern of rainfall (Factor E). Although trampling, trail runoff, invasive species, and grazing are likely to be ameliorated by ongoing and future conservation efforts on Federal lands in the United States, the effects of small population size, geographic isolation, and climate change are all rangewide threats and expected to continue into the foreseeable future. There is limited information available regarding the known populations of Guadalupe fescue in Mexico; however, most of the above factors are likely to be widespread and ongoing threats throughout the potential habitats in Mexico (Service 2016).

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that Guadalupe fescue is currently in danger of extinction throughout all of its range, and therefore warrants a determination that it is an endangered species. There are only two known extant populations of Guadalupe fescue, one each in Texas and in Coahuila, Mexico. We have no recent observations of three additional populations reported from Mexico, and their statuses are unknown. A second population reported from the United States has not been seen in more than 60 years, despite extensive surveys, and is presumed extirpated. Based on monitoring conducted in 2013 and 2014, the Chisos Mountains population in the United States is estimated to have in the range of about 100 and 200 individuals, well below the estimated MVP of 500 to 1,000 individuals, and the monitored population has declined from 127 individuals in 1993, to 47 individuals in 2014 (Service 2016, Appendix B). Therefore, this population is considered to have low resiliency. The Maderas del Carmen population in Mexico may have held the estimated MVP as recently as 2003, but the current population status is unknown, and thus the population is considered to have limited resilience (Service 2016). With only two known populations, both with limited resiliency, the species has extremely low redundancy and representation. However, if there are additional extant populations in Mexico, we would expect the redundancy and representation of the species would be greater. Based on the best available information, therefore, the species' overall risk of extinction is such that we find it meets the definition of an endangered species. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Guadalupe fescue as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for Guadalupe fescue because of the immediacy of threats facing the species with only two known populations, one of which is declining in abundance.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. We have determined that Guadalupe fescue is endangered throughout all of its range, so an evaluation of any "significant" portion of the range is unnecessary. See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, as well as conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries, and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. Should the Guadalupe fescue be listed as an endangered or a threatened species in a final rule, the completed recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions could be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of Guadalupe fescue. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although Guadalupe fescue is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph are limited to the land management activities by the National Park Service within Big Bend National Park.

With respect to endangered plants, prohibitions outlined at 50 CFR 17.61 make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Exceptions to these prohibitions are outlined in 50 CFR 17.62.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, the Service may issue a permit authorizing any activity otherwise prohibited by 50 CFR 17.61 for scientific purposes or for enhancing the propagation or survival of endangered plants.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices conducted on privately owned lands, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;

(2) Recreation and management at National Parks that is conducted in accordance with existing National Park Service regulations and policies; and

(3) Normal residential landscape activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized damage or collection of Guadalupe fescue from lands under Federal jurisdiction;

(2) Destruction or degradation of the species' habitat on lands under Federal jurisdiction, including the intentional introduction of nonnative organisms that compete with, consume, or harm Guadalupe fescue;

(3) Livestock grazing on lands under Federal jurisdiction; and

(4) Pesticide applications on lands under Federal jurisdiction in violation of label restrictions.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;
(2) Use the active voice to address readers directly;
(3) Use clear language rather than jargon;
(4) Be divided into short sections and sentences; and
(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by adding an entry for "*Festuca ligulata*" to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
Festuca ligulata	Guadalupe fescue	Wherever found	E	[***Federal Register*** *citation of the final rule*]
*	*	*	*	*

Dated: August 18, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–21588 Filed 9–8–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2016–0100; 4500030113]

RIN 1018–BA75

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Guadalupe Fescue

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Festuca ligulata* (Guadalupe fescue) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 7,815 acres (3,163 hectares) in Brewster County, Texas, located entirely in Big Bend National Park, fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for Guadalupe fescue.

DATES: We will accept comments on the proposed rule or DEA that are received or postmarked on or before November 8, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 24, 2016.

ADDRESSES: You may submit comments on the proposed rule or DEA by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R2–ES–2016–0100, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2016–0100, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: The DEA is available at *https://www.fws.gov/southwest/es/AustinTexas/ESA_Our_species.html,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2016–0100, and at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this proposed critical habitat designation and are available: at *https://www.fws.gov/southwest/es/AustinTexas/ESA_Our_species.html,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2016–0100, and at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd., Suite 200, Austin, TX 78758; telephone 512–490–0057; facsimile 512–490–0974. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Guadalupe fescue habitat;

(b) What areas occupied at the time of listing, and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change;

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why; and

(e) Current habitat information within McKittrick Canyon in Guadalupe Mountains National Park and whether any potential habitat areas there may be essential to the conservation of the Guadalupe fescue.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on Guadalupe fescue and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

All previous Federal actions are described in the proposal to list Guadalupe fescue as an endangered species under the Act, published elsewhere in this issue of the **Federal Register**.

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the

Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Information sources may include the species status assessment; any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools would continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be

expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat."

As stated in the proposed listing rule published elsewhere in this issue of the **Federal Register**, there is currently no imminent threat of take attributed to collection or vandalism for Guadalupe fescue, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, we determine if such designation of critical habitat would not be beneficial to the species. In our proposed listing rule, we determined that the present or threatened destruction, modification, or curtailment of a species' habitat or range is a threat to Guadalupe fescue. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and would be beneficial, we find that designation of critical habitat is prudent for Guadalupe fescue.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for Guadalupe fescue is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for Guadalupe fescue.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We conducted a Species Status Assessment (SSA Report) for Guadalupe fescue, which is an evaluation of the best available scientific and commercial data on the status of the species. The SSA Report (Service 2016; available at: *https://www.fws.gov/southwest/es/AustinTexas/ESA_Our_species.html*) is based on a thorough review of the natural history, habitats, ecology, populations, and range of Guadalupe fescue. The SSA Report provides the scientific information upon which this proposed critical habitat determination is based (Service 2016).

Space for Individual and Population Growth and for Normal Behavior

The size of suitable habitat areas for Guadalupe fescue is likely to be important, although we do not know how large an area must be to support a viable population. However, we do know that many plant species in the Chihuahuan Desert have migrated to different elevations and latitudes, or were extirpated, since the end of the late Wisconsinan glaciation (about 11,000 years ago). Larger habitat areas provide more opportunities for populations to migrate, as plant communities and weather patterns change, and therefore may be more suitable. Larger habitats are also expected to support larger populations and greater genetic diversity. We provisionally estimate that habitats of at least 494 ac (200 ha) are more likely to support long-term viability of Guadalupe fescue. Therefore, we determine that relatively large habitat areas that are at least 494 ac (200 ha) are important to provide the necessary space to support the physical or biological feature for this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Precipitation is important to Guadalupe fescue, as flowering and survival rates are positively correlated with rainfall amount and timing. The amount of rainfall over longer periods, such as the previous 21 months, appears to have more influence on flowering, which occurs from August to October, than rainfall during the previous 9 months or the previous February through May (Service 2016, Appendix B). Population size may be positively correlated with rainfall over relatively long (33-month) periods. Rainfall (or drought) over shorter time frames appears to have less effect on population size. Precipitation amounts and patterns are weather conditions that support the physical or biological features for Guadalupe fescue.

All historic and extant populations of Guadalupe fescue occur above about 1,800 meters (m) (5,905 feet (ft)) in the Chihuahuan Desert of northern Mexico and Texas, although we do not know the actual elevation tolerance of this species. Many plant species occur at relatively lower elevations in mountains where habitats are relatively cool and moist, such as in narrow ravines, north-facing slopes (in the northern hemisphere), or windward slopes where there is a pronounced rain shadow (higher rainfall on prevailing windward slopes). Larger habitat areas provide more opportunities for populations to migrate, as plant communities and weather patterns change, and therefore may be more suitable. Nevertheless, the 1,800-m elevation contour represents the best available information regarding the elevation tolerance of this species.

Habitat areas do not need to be contiguous to be considered occupied, provided that they are not separated by wide, low-elevation gaps. This rational is based on expected long-distance dispersal of viable seeds of Guadalupe fescue by Carmen white-tailed deer (*Odocoileus virginianus carminis*), the most common ungulate in the Chisos Mountains. The diet of Carmen white-tailed deer consists of up to 12 percent grasses. Carmen white-tailed deer use habitats with dense stands of oak and the presence of free-standing water, and the range is restricted to elevations above 906 to 1,220 m (2,970 to 4,000 ft). The estimated home range is a radius of 1.1 to 2.4 kilometers (km) (0.7 to 1.5 miles (mi)). Hence, we expect that Carmen white-tailed deer are able to disperse viable seeds of Guadalupe fescue to potential habitats that are not separated by gaps that are below about 1,000 m (3,208 ft) and more than 2.4 km (1.5 mi) wide.

All known populations of Guadalupe fescue occur in rocky or talus soils of partially shaded sites in the understory of conifer-oak woodlands within the Chihuahuan Desert. The associated vegetation consists of relatively open stands of both conifer and oak trees in varying proportions. Conifer-oak woodlands may occur in areas classified as pine, conifer, pine-oak, or conifer-oak, and as forest or woodland, on available vegetation classification maps. The conifer species typically include one or more of the following: Mexican pinyon (*Pinus cembroides*), Arizona pine (*P. arizonica*), southwestern white pine (*P. strobiformis*), alligator juniper (*Juniperus deppeana*), drooping juniper (*J. flaccida*), and Arizona cypress (*Cupressus arizonica*). Characteristic oaks include one or more of the following: Chisos red oak (*Quercus gravesii*), gray oak (*Q. grisea*), Lacey oak (*Q. laceyi*), and silverleaf oak (*Q. hypoleucoides*). Other broadleaf trees, such as bigtooth maple (*Acer grandidentatum*), may also occur in this element. Therefore, we consider areas of rocky or talus soils of partially shaded sites in the understory of conifer-oak woodlands above elevations of 1,800 m (5,905 ft) within the Chihuahuan Desert to be a physical or biological feature of Guadalupe fescue.

Habitats That Are Protected From Disturbance or Are Representative of the Historic Geographical and Ecological Distributions of a Species

The role of fire is very likely important to maintaining Guadalupe fescue habitat for two reasons. First, many grass and forb understory species are stimulated during the years immediately following wildfire, but they decline during long periods without fire. Second, relatively frequent forest wildfires tend to be relatively cool because large amounts of dry fuel, such as dead trees, fallen branches, and leaf litter, have not accumulated; such fires do not kill large numbers of trees or radically change the vegetation structure and composition. Conversely, wildfires that burn where fuels and small dead trees have accumulated for many years can be very hot, catastrophic events that not only kill entire stands of trees, but also kill the seeds and beneficial microorganisms in the soil, such as mycorrhizal fungi. Fire is probably inevitable in the conifer and conifer-oak forests of the Chihuahuan Desert. Thus, more frequent, relatively cool fires may be essential for the long-term sustainability of these forested ecosystems and of Guadalupe fescue populations.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential for Guadalupe fescue from studies of this species' habitat, ecology, and life history, as described above. Additional information can be found in the proposed listing rule, published elsewhere in this issue of the **Federal Register**, and in the SSA Report (Service 2016). We have determined that the following physical or biological features are essential to the conservation of Guadalupe fescue:

(1) Areas within the Chihuahuan Desert:

(a) Above elevations of 1,800 m (5,905 ft), and

(b) That contain rocky or talus soils.

(2) Associated vegetation characterized by relatively open stands of both conifer and oak trees in varying proportions. This may occur in areas classified as pine, conifer, pine-oak, or conifer-oak, and as forest or woodland, on available vegetation classification maps.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: Changes in wildfire frequency; livestock grazing; erosion and trampling by visitors hiking off the trails; and invasive species.

Management activities that could ameliorate these threats and protect the integrity of the conifer oak habitat include, but are not limited to: (1) Conducting prescribed burns under conditions that favor relatively cool burn temperatures; (2) removing livestock, including stray and feral livestock, from Guadalupe fescue habitats; (3) appropriately maintaining trails to reduce the incidence of trampling and erosion, and informing visitors of the need to remain on trails; and (4) controlling and removing introduced invasive plants, such as horehound (*Marrubium vulgare*) and King Ranch bluestem (*Bothriochloa ischaemum*).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific and commercial data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are proposing to designate critical habitat in areas within the United States that are occupied by Guadalupe fescue at the time of proposed listing in 2016. Occupied habitat for Guadalupe fescue is defined as areas with positive survey records since 2009 (when the Maderas del Carmen population in Mexico was last documented), and habitat areas around sites with positive survey records that contain conifer-oak woodlands and that are not separated by gaps of lower-elevation (<1,000 m) terrain and are within the maximum distance that seed dispersal is expected to occur (about 2.4 km (1.5 mi)).

Habitat areas do not need to be contiguous to be considered occupied, provided that they are not separated by wide, low-elevation gaps. This rational is based on expected long-distance dispersal of viable seeds of Guadalupe fescue by Carmen white-tailed deer, the most common ungulate in the Chisos Mountains. The diet of Carmen white-tailed deer consists of up to 12 percent grasses. Carmen white-tailed deer use habitats with dense stands of oak and the presence of free-standing water, and the range is restricted to elevations above 906 to 1,220 m (2,970 to 4,000 ft). The estimated home range is a radius of 1.1 to 2.4 km (0.7 to 1.5 mi). Hence, we expect that Carmen white-tailed deer are able to disperse viable seeds of Guadalupe fescue to potential habitats that are not separated by gaps that are below about 1,000 m (3,208 ft) and not more than 2.4 km (1.5 mi) wide.

Sources of data on Guadalupe fescue occurrences include: The Texas Natural Diversity Database; herbarium records from the University of Texas, Missouri Botanical Garden, and University of Arizona; a survey report by Valdés-Reyna (2009); a status survey (Poole 1989); and monitoring data from Big Bend National Park (Sirotnak 2014). We obtained information on ecology and habitat requirements from the candidate conservation agreement (Big Bend National Park and Service 2008), scientific reports (Camp et al. 2006; Moir and Meents 1981; Zimmerman and Moir 1998), and Rare Plants of Texas (Poole et al. 2007). Big Bend National Park (2015) provided a recently revised vegetation classification map of the Park. We used Digital Elevation Models created by the U.S. Geological Service. We documented a review and analysis of these data sources in the SSA Report (Service 2016).

Areas Occupied at the Time of Listing

The proposed critical habitat designation includes the only known extant population of Guadalupe fescue in the United States, within the Chisos Mountains of Big Bend National Park, which has retained the physical or biological features that will allow for the maintenance and expansion of the existing population (criteria described above). Guadalupe fescue historically occupied one additional site in the United States in McKittrick Canyon within Guadalupe Mountains National Park. However, we are not proposing critical habitat there because the species has not been observed since 1952, and it is unlikely that the area is occupied at the time of listing (Armstrong 2016; Poole 2016; Sirotnak 2016). The best available information indicates that Guadalupe fescue is extirpated from McKittrick Canyon, and the habitat would no longer support the species due to the abundance of invasive grasses such as King Ranch bluestem, and, therefore, we do not consider the area within McKittrick Canyon to be essential for the conservation of the species.

We are proposing a single unit of critical habitat consisting of five subunits totaling 7,815 acres (ac) (3,163 hectares (ha)). Although currently Guadalupe fescue plants have only been found in Subunit 1, we consider all subunits to be occupied because they are not separated by gaps of lower-elevation (<1,000 m) terrain greater than 2.4 km (1.5 mi) wide. All subunits are within the Chisos Mountains of Big Bend National Park (see map in the Proposed Regulation Promulgation section, below). See Table 1, below, for summaries of land ownership and areas. No units or portions of units are being considered for exclusion or exemption.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for Guadalupe fescue. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential to the conservation of the Guadalupe fescue. We propose to designate one critical habitat unit, consisting of five subunits within the Chisos Mountains, that contains all of the identified physical or biological features to support the life-history processes of Guadalupe fescue.

This proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2016–0100, on our Internet site (*https://www.fws.gov/southwest/es/AustinTexas/ESA_Our_species.html*), and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Proposed Critical Habitat Designation

We are proposing to designate approximately 7,815 ac (3,163 ha) in one unit containing five subunits as critical habitat for Guadalupe fescue. The critical habitat area we describe below constitutes our current best assessment of areas that meet the definition of critical habitat for Guadalupe fescue. The area we propose as critical habitat is shown in Table 1.

TABLE 1—OCCUPANCY, LAND OWNERSHIP, AND SIZE OF GUADALUPE FESCUE PROPOSED CRITICAL HABITAT CHISOS MOUNTAINS UNIT AND SUBUNITS

[Amounts may not total due to rounding]

Subunit	Occupied at time of listing?	Currently occupied?	Ownership	Size (ha)	Size (ac)
1	Yes	Yes	National Park Service	2,648	6,542
2	Yes	Yes	National Park Service	391	966
3	Yes	Yes	National Park Service	100	248
4	Yes	Yes	National Park Service	13	32
5	Yes	Yes	National Park Service	10	25
Total				3,163	7,815

Below, we present a brief description of the Chisos Mountains Unit (including all subunits) and reasons why it meets the definition of critical habitat for Guadalupe fescue.

Unit 1: Chisos Mountains

Unit 1 consists of 7,815 ac (3,163 ha) in the Chisos Mountains of Big Bend National Park. This unit is within the geographical area occupied by the species at the time of listing and contains all of the physical or biological features essential to the conservation of Guadalupe fescue. The habitat within Unit 1 consists of elevations of 1,800 m (5,905 ft) or greater, and the associated vegetation is classified as pine, pine-oak, juniper-oak, or conifer-oak. The geographic delineation of the unit resulted in five subunits that are separated from each other by narrow gaps of lower-elevation terrain, but are otherwise similar with respect to vegetation, geological substrate, and soils. The physical or biological features in this unit may require special management considerations or protection to address threats from changes in wildfire frequency, livestock grazing, erosion and trampling by visitors hiking off the trail, and invasive species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

On February 11, 2016, we published a final rule (81 FR 7214) that sets forth a new definition of destruction or adverse modification. Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of Guadalupe fescue. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of these species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for Guadalupe fescue. These activities include, but are not limited to:

(1) Actions that would remove or significantly alter the conifer-oak woodland vegetation. Such actions could include, but are not limited to, cutting or killing trees and shrubs to an extent that a site is no longer suitable to Guadalupe fescue, due to increased levels of sunlight, exposure to wind, or other factors. Fire suppression has changed the natural wildfire cycle and may have altered the conifer-oak woodland habitat to an extent that it is no longer optimal for Guadalupe fescue due to increased tree and shrub densities. Hence, pruning or thinning of woody vegetation may be prescribed to benefit Guadalupe fescue if it is deemed that the tree canopy is too dense; prescribed pruning or thinning would, therefore, not be considered adverse modification. The introduction of invasive plants could also adversely affect Guadalupe fescue through increased competition for light, water, and nutrients, or through an allelopathic effect.

(2) Actions that disturb the soil, or lead to increased soil erosion. Such

actions could include, but are not limited to, excavation of the soil; removal of vegetation and litter; or construction of roads, trails, or structures that channel runoff and form gullies. The loss or disturbance of soil could deplete the soil seed bank of Guadalupe fescue or alter soil depth and composition to a degree that is no longer suitable for Guadalupe fescue. However, some actions that affect soil or litter may be prescribed to improve habitat conditions for Guadalupe fescue, such as prescribed burning, and would, therefore, not be considered adverse modifications.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of Guadalupe fescue, the benefits of critical habitat include public awareness of the presence of Guadalupe fescue and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Guadalupe fescue due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies. Because Guadalupe fescue critical habitat is located exclusively on National Park Service lands, a Federal nexus exists for any action.

We have not considered any areas for exclusion from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**, above).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, which includes the existing regulatory and socioeconomic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for Guadalupe fescue (IEc 2016, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation for the species which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is what we consider our DEA of the proposed critical habitat designation for Guadalupe fescue and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O.s' regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess, to the extent practicable, the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely to be affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for Guadalupe fescue, first we identified, in the IEM dated February 23, 2016, probable incremental economic impacts associated with the following categories of activities: Federal lands management (National Park Service, Big Bend National Park).

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where Guadalupe fescue is present, Federal agencies will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species, should the species be listed as an endangered species. If we finalize the proposed listing and critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for Guadalupe fescue's critical habitat. Because the designation of critical habitat for Guadalupe fescue was proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to Guadalupe fescue would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for Guadalupe fescue consists of a single unit composed of five subunits, all of which are currently occupied by the species. We are not proposing to designate any units of unoccupied habitat. The proposed Chisos Mountains critical habitat unit totals 7,815 ac (3,163 ha) and is entirely contained within federally owned land at Big Bend National Park. We have not identified any ongoing or future actions that would warrant additional recommendations or project modifications to avoid adversely modifying critical habitat above those we would recommend for avoiding jeopardy.

Regarding projects that would occur in occupied habitat outside known population locations, we will recommend that Big Bend National Park first conduct surveys for Guadalupe fescue within the project impact area. If the species is found, we would recommend the same modifications previously described for avoiding jeopardy to the species. If the species is not found, we will recommend only that Big Bend National Park follow its established land management procedures.

We anticipate minimal change in behavior at Big Bend National Park if we designate critical habitat for Guadalupe fescue. The only change we foresee is conducting surveys in areas of critical habitat based on our recommendation for surveys. Based on Big Bend National Park's history of consultation under section 7 of the Act and on the consultation history of the most comparable species, Zapata bladderpod (*Lesquerella thamnophila*), we anticipate that this critical habitat designation may result in a maximum of two additional consultations per decade.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an analysis of the economic impacts of the proposed critical habitat designation and related factors. In our DEA, we did not identify any ongoing or future actions that would warrant additional recommendations or project modifications to avoid adversely modifying critical habitat above those we would recommend for avoiding jeopardy to the species, and we anticipate minimal change in behavior at Big Bend National Park due to the designation of critical habitat for Guadalupe fescue (IEc 2016).

At this time, we are not proposing any exclusions based on economic impacts from the proposed designation of critical habitat for Guadalupe fescue. During the development of a final designation, we will consider any additional economic impact information received through the public comment period, and as such areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for Guadalupe fescue are not owned or managed by the Department of Defense or Department of Homeland Security. In addition, the locations of the proposed critical habitat areas are at high elevations in remote areas of Big Bend National Park and not close enough to the international border with Mexico to raise any border maintenance concerns. Therefore, we anticipate no impact on national security. Consequently, the Secretary is not intending to exercise her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for Guadalupe fescue, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not intend to exercise her discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified above in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if made final, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat will significantly affect energy supplies, distribution, or use, because the proposed critical habitat unit is entirely contained within Big Bend National Park. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because we are designating only a single critical habitat unit that is entirely owned by the National Park Service. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for Guadalupe fescue in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that, if adopted, the designation of critical habitat for Guadalupe fescue would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we request information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Texas. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, this proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and this document provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). Because all of the proposed critical habitat lies outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we will not prepare a NEPA analysis.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations With Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that Guadalupe fescue does not occur on any tribal lands at the time of listing, and no tribal lands unoccupied by Guadalupe fescue are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for Guadalupe fescue on tribal lands. In addition, no tribes have expressed interest in either the species or the areas proposed as critical habitat, and no further tribal coordination will be conducted unless requested during the public comment period for this proposed rule.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available in the SSA Report (Service 2016) on the Internet at *http://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rulemaking are the staff members of the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.96(a) by adding an entry for "*Festuca ligulata* (Guadalupe fescue)" in alphabetical order under Family Poaceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(a) *Flowering plants.*

* * * * *

Family Poaceae: *Festuca ligulata* (Guadalupe fescue)

(1) Critical habitat units are depicted for Brewster County, Texas, on the map below.

(2) Within these areas, the physical or biological features essential to the conservation of Guadalupe fescue consist of:

(i) Areas within the Chihuahuan Desert:

(A) Above elevations of 1,800 m (5,905 ft), and

(B) That contain rocky or talus soils.

(ii) Associated vegetation characterized by relatively open stands of both conifer and oak trees in varying proportions. This may occur in areas classified as pine, conifer, pine-oak, or conifer-oak, and as forest or woodland, on available vegetation classification maps.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* We defined the critical habitat unit using the following Geographic Information System data layers: A Digital Elevation Model produced by U.S. Geological Survey; and a Shapefile of vegetation classifications at Big Bend National Park, created and provided to us by Park personnel. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's Internet site (*https://www.fws.gov/southwest/es/AustinTexas/ESA_Our_species.html*), at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2016–0100, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Map of Unit 1, Big Bend National Park, Brewster County, Texas, follows:

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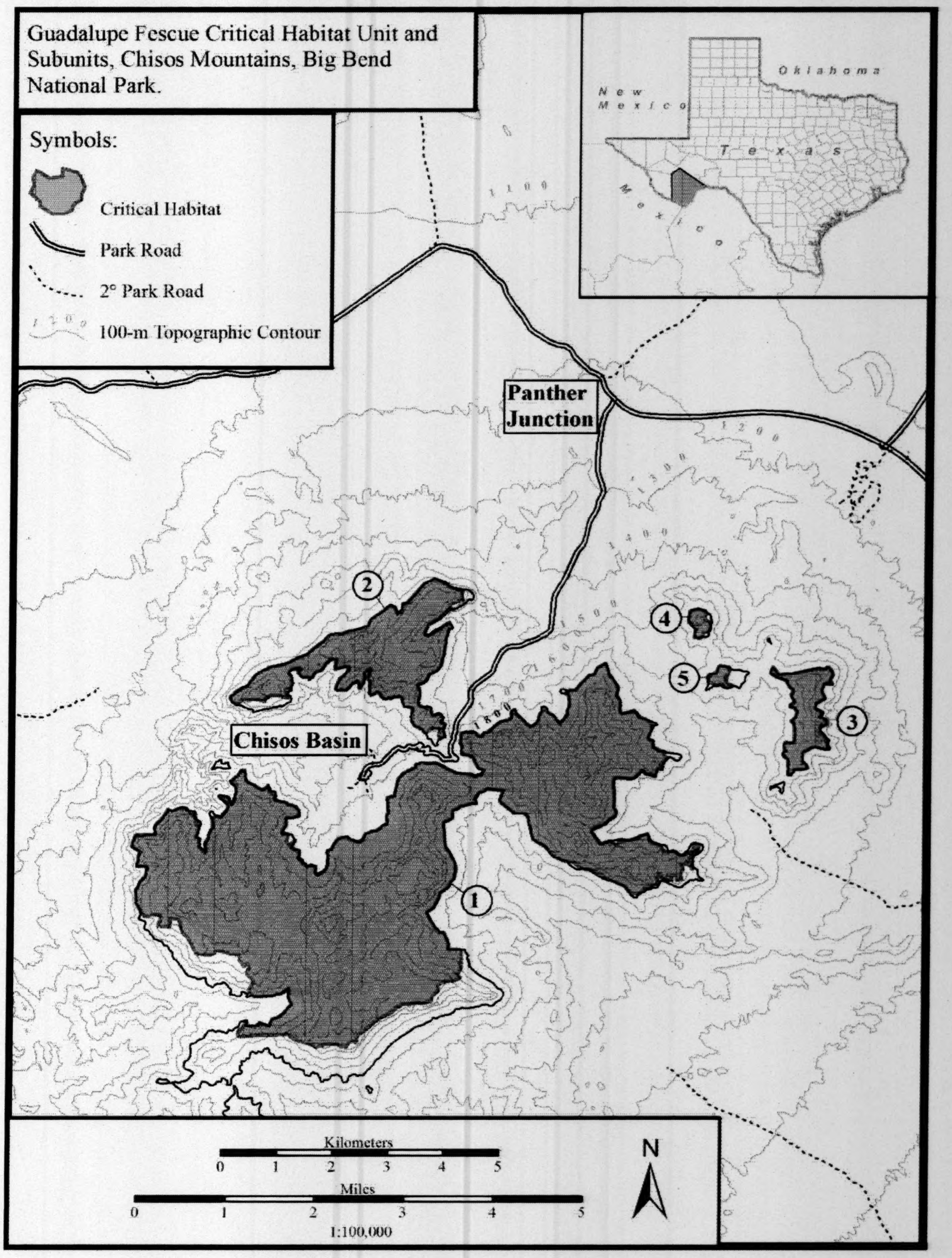

Guadalupe Fescue Critical Habitat Unit and Subunits, Chisos Mountains, Big Bend National Park.

Symbols:
Critical Habitat
Park Road
2° Park Road
100-m Topographic Contour
New Mexico
Oklahoma
Texas
Mexico
Panther Junction
Chisos Basin
1100
1200
1300
1400
1500
1600
1700
1800
1
2
3
4
5
Kilometers
0 1 2 3 4 5
Miles
0 1 2 3 4 5
1:100,000
N

* * * * *

Dated: August 22, 2016.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–21587 Filed 9–8–16; 8:45 am]

BILLING CODE 4333–15–C

Notices

Federal Register
Vol. 81, No. 175
Friday, September 9, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Submission for OMB Review; Comment Request

September 6, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by October 11, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Livestock, Poultry, and Grain Market News.

OMB Control Number: 0581–0033.

Summary of Collection: The Agricultural Marketing Act of 1946, (60 Stat. 1087–1091, as amended: 7 U.S.C. 1621–1627, (AMA) legislates that USDA shall ''collect and disseminate marketing information . . .'' and ''. . . collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on marketing supplies, storage, stocks, quantity, quality, and condition of such products in various positions in the marketing channel, use of such products, and shipments and unloads thereof.'' The mission of Market New is to provide current unbiased, factual information to all members of the Nation's agricultural industry, from farm to retailer.

Need and use of the Information: Information is used by the private sector to make economic decisions to establish market values for application in contracts or settlement value, and to address specific concerns or issues related to trade agreements and disputes as well as being used by educational institutions, specifically, agricultural colleges and universities. Government agencies such as the Foreign Agricultural Service, Economic Research Service and the National Agricultural Statistics Service use market news data in the performance of their missions. LPGMN reports provide interested segments of the market chain and the general public with unbiased comprehensive livestock, poultry, meat, eggs, wool, grain market data which helps equalize the competitive position of all market participants. The absence of these data would deny primary and secondary users information that otherwise would be available to aid them in their production and marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 2,990.

Frequency of Responses: Reporting: Weekly; Monthly.

Total Burden Hours: 16,038.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. 2016–21700 Filed 9–8–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Eagle County, CO; Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement; Berlaimont Estates Access Route EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of withdrawal.

SUMMARY: The United States Department of Agriculture, Forest Service, White River National Forest, is withdrawing the August 18, 2016, **Federal Register** notice (81 FR 55173) which announced their intent to prepare an Environmental Impact Statement in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 (NEPA), to analyze Berlaimont Estates LLC (Berlaimont) application for an easement to improve access to their 680-acre private inholding within the White River National Forest to the north of Interstate 70 in the vicinity of Edwards, Colorado.

After further review, the Forest has found that elements of this proposal may have been in conflict with the White River National Forest Land and Resource Management Plan—2002 Revision.

DATES: This withdrawal of the Notice of Intent is effective on the date of this publication in the **Federal Register**.

ADDRESSES: Scott Fitzwilliams, Forest Supervisor, c/o Matt Klein, Realty Specialist, White River National Forest, P.O. Box 190, Minturn, CO 81645.

FOR FURTHER INFORMATION CONTACT: Matt Klein, Realty Specialist, Eagle/Holy Cross Ranger District, 24747 U.S. Hwy.

24, P.O. Box 190, Minturn, Colorado 81645. Mr. Klein can be reached by phone at (970) 827–5182 or by email at *matthewklein@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Scoping Process

This Notice of Withdrawal cancels the scoping process initiated on August 18, 2016. The Forest Service is reevaluating how to proceed with this proposal.

The public open house meeting scheduled on Wednesday, September 7th, 2016 from 6:00 p.m. to 9:00 p.m. has been CANCELED.

Dated: September 2, 2016.

Scott Fitzwilliams,

Forest Supervisor.

[FR Doc. 2016–21714 Filed 9–8–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Submission for OMB Review; Comment Request

September 6, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 11, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Nursery and Christmas Tree Production Surveys.

OMB Control Number: 0535–0244.

Summary of Collection: The National Agricultural Statistics Service (NASS) is charged with the responsibility of providing reliable, up-to-date information concerning the Nation's crop and livestock production, prices, and disposition, as well as environmental statistics. This includes estimates of production and value of key nursery products and production operations. Due to budget cuts the Nursery and Floriculture Chemical Use Survey was discontinued. The Nursery and Christmas Tree Production Survey that was conducted in seventeen States has been discontinued due to the reinstatement of the Census of Horticultural Specialties. Only the two State surveys which are conducted in Oregon will be renewed at this time. NASS will collect the information using surveys. The authority for these data collection activities is granted under U.S.C. Title 7, Section 2204.

Need and Use of the Information: Nursery and Christmas tree production data will continue to be collected by NASS and used by State governments, universities and other organizations under external project agreements. Christmas tree and nursery growers are a very important part of Oregon's agricultural production. According to the 2014 Census of Horticultural Specialties, Oregon producers of Christmas trees sold just under 35 percent of the U.S. total.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 1,400.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 689.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–21696 Filed 9–8–16; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee To Discuss a Draft Report Regarding Civil Rights and the School to Prison Pipeline in Indiana

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Monday, September 19, 2016, from 3:00 p.m–4:00 p.m. EDT. The Committee will discuss findings and recommendations, as well as a draft report regarding school discipline policies and practices which may facilitate disparities in juvenile justice involvement and youth incarceration rates on the basis of race, color, disability, or sex, in what has become known as the "School to Prison Pipeline," in preparation to issue a report to the Commission on the topic.

DATES: The meeting will be held on Monday September 19, 2016, from 3:00 p.m.–4:00 p.m. EDT.

Public Call Information:

Dial: 888–352–6798

Conference ID: 7001515

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at 312–353–8311 or *mwojnaroski@usccr.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public vial the following toll free call in number 888–352–6798 conference ID 7001515. Any interested member of the public may call this number and listen to the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are invited to make statements during the designated open comment period. In addition, members of the public may submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and following the meeting at *https://database.faca.gov/committee/meetings.aspx?cid=247* and following the links for "Meeting Details" and then "Documents." Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

1. Welcome and Roll Call
2. Draft Report: "Civil Rights and the School to Prison Pipeline in Indiana"
   a. Committee discussion
   b. Findings and Recommendations
3. Open Comment
4. Adjournment

Exceptional Circumstance: Pursuant to the Federal Advisory Committee Management Regulations (41 CFR 102–3.150), the notice for this meeting is given fewer than 15 calendar days prior to the meeting due to exceptional circumstances of Committee availability and publication schedule.

Dated: September 6, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–21737 Filed 9–8–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Magnesia Carbon Bricks From the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") is conducting an administrative review of the antidumping duty order on Magnesia Carbon Bricks ("MCBs") from the People's Republic of China ("PRC"), for the period of review ("POR") September 1, 2014, to August 31, 2015. The Department preliminarily determines that Fengchi Imp. and Exp. Co., Ltd. of Haicheng City ("Fengchi") and RHI Refractories Liaoning, Co. Ltd. ("RHI") had no reviewable shipments of subject merchandise during the POR. The Department is also preliminarily rescinding this review with respect to Fedmet Resources Corporation ("Fedmet"). Interested parties are invited to comment on these preliminary results.

DATES: Effective September 9, 2016.

FOR FURTHER INFORMATION CONTACT: Kenneth Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6491.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2015, the Department published in the **Federal Register** an opportunity to request an administrative review of the antidumping duty order on MCBs from the PRC.[1] On September 30, 2015, the Department received a request from Petitioner[2] to conduct an administrative review of Dashiqiao City Guancheng Refractor Co., Ltd.; Fedmet; Fengchi; Fengchi Mining Co., Ltd. of Haicheng City; Fengchi Refractories Co., of Haicheng City; Jiangsu Sujia Group New Materials Co., Ltd.; Liaoning Fucheng Refractories Group Co., Ltd.; Liaoning Fucheng Special Refractory Co., Ltd.; Liaoning Jiayi Metals & Minerals Co., Ltd.; Puyang Refractories Group Co., Ltd.; RHI; Yingkou Bayuquan Refractories Co., Ltd. ("BRC"); Yingkou Dalmond Refractories Co., Ltd.; Yingkou Guangyang Co., Ltd.; Yingkou Jiahe Refractories Co. Ltd.; Yingkou Kyushu Refractories Co., Ltd.; Yingkou New Century Refractories Ltd.; and Yingkou Wonjin Refractory Material Co., Ltd.[3] On November 9, 2015, the Department initiated this review based on these review requests.[4] On December 8 and 9, 2015, RHI, Fengchi, Fengchi Mining Co., Ltd. of Haicheng City, Fengchi Refractories Co., of Haicheng City, Fedmet, and BRC submitted no shipments letters, stating they made no entries, exports, or sales of subject merchandise into the United Stated during the POR.[5]

Scope of the Order

The merchandise subject to the order includes certain MCBs. Certain MCBs that are the subject of this investigation are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000, and 6815.99.4000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.[6]

Partial Rescission of the Administrative Review

In its No Shipment Certification, Fedmet stated that it is not a PRC producer or exporter of the subject merchandise but a U.S. importer.[7] Fedmet cited its entry of appearance and application for business proprietary access to demonstrate its status as an importer.[8] Based on the information available, the Department preliminarily determines that Fedmet's entries will be subject to the appropriate exporter's cash deposit requirements and assessment rates, as outlined below. Accordingly, we are preliminarily rescinding this review for Fedmet.

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 80 FR 52741 (Sept. 1, 2015).

[2] The Petitioner is the Magnesia Carbon Bricks Fair Trade Committee ("the Committee"), an ad hoc association comprised of the following three U.S. producers of magnesia carbon bricks: Resco Products, Inc.; Magnesita Refractories Company; and Harbison Walker International, Inc. (hereinafter "Petitioner").

[3] *See* "Certain Magnesia Carbon Bricks from the People's Republic of China: Request for Administrative Review," dated September 30, 2015.

[4] *See Initiation of Antidumping Duty Administrative Reviews,* 80 FR 69193 (November 9, 2015) ("*Initiation Notice*").

[5] *See* No Shipments Certification from RHI, dated December 8, 2015, and No Shipment Certifications from Fengchi, Fengchi Mining Co., Ltd. of Haicheng City, Fengchi Refractories Co., of Haicheng City, Fedmet and BRC, dated December 9, 2015.

[6] For a full description of the scope of the order, see Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for the Preliminary Results of the 2014–2015 Antidumping Duty Administrative Review: Magnesia Carbon Bricks from the People's Republic of China," ("Preliminary Decision Memorandum") dated concurrently with and hereby adopted by this notice.

[7] *See* Fedmet's No Shipments Certification, dated December 9, 2015.

Separate Rate Status

For the 17 companies for whom we are not rescinding this review, we preliminarily determine that only Fengchi and RHI demonstrated their continued eligibility for a separate rate because, as discussed below, they demonstrated that they had no shipments during the POR and thus will maintain their separate rate status from the date of initiation of this administrative review.

The remaining companies did not submit a separate rate application or certification. Therefore, the following companies have not established their eligibility for a separate rate, and the Department preliminarily determines that they are considered part of the PRC-wide entity: Dashiqiao City Guancheng Refractor Co., Ltd.; Fengchi Mining Co., Ltd. of Haicheng City; Fengchi Refractories Co., of Haicheng City; Jiangsu Sujia Group New Materials Co., Ltd.; Liaoning Fucheng Refractories Group Co., Ltd.; Liaoning Fucheng Special Refractory Co., Ltd.; Liaoning Jiayi Metals & Minerals Co., Ltd.; Puyang Refractories Group Co., Ltd.; BRC;[9] Yingkou Dalmond Refractories Co., Ltd.; Yingkou Guangyang Co., Ltd.; Yingkou Jiahe Refractories Co. Ltd.; Yingkou Kyushu Refractories Co., Ltd.; Yingkou New Century Refractories Ltd.; and Yingkou Wonjin Refractory Material Co., Ltd.

The Department's policy regarding conditional review of the PRC-wide entity applies to this administrative review.[10] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the PRC-wide entity is not under review and therefore its rate is not subject to change. The rate previously established for the PRC-wide entity in this proceeding is 236 percent.[11]

Preliminary Determination of No Shipments

Fengchi and RHI submitted timely-filed certifications that they had no shipments of subject merchandise to the United States during the POR.[12] The Department sent inquiries to U.S. Customs and Border Protection ("CBP") to confirm the no shipments responses received from these companies.[13] We received no contradictory information from CBP indicating that there were suspended entries of subject merchandise into the United States exported by these companies. Therefore, we preliminarily determine that Fengchi and RHI had no shipments of subject merchandise during the POR.

Consistent with the Department's practice in nonmarket economy cases, the Department finds that it is appropriate not to rescind the review, in part, in these circumstances, but rather to complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of the review.[14]

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the "Act"). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[15] The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/enforcement/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists for the period September 1, 2014, through August 31, 2015:

Exporter	Weighted-average dumping margin (percent)
PRC-Wide Entity	236.00

Public Comment and Opportunity To Request a Hearing[16]

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review.[17] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[18] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[19] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.

Any interested party may request a hearing within 30 days of publication of this notice.[20] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.[21] If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[22]

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[8] *Id. See also* "Magnesia Carbon Bricks from the People's Republic of China, Case No. A–570–954: Entry of Appearance and APO Application," dated November 10, 2015.

[9] Although BRC submitted a no shipments certification, it remains part of the PRC-wide entity. *See Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 22230, 22231 (April 15, 2013).

[10] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[11] *See Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results and Final Partial Rescission of the Antidumping Duty Administrative Review; 2012–2013,* 80 FR 19961, 19962 (April 14, 2015).

[12] *See* No Shipment Certification from RHI, dated December 8, 2015, and No Shipment Certifications from Fengchi, dated December 9, 2015.

[13] *See* Customs No Shipments Inquiry, dated February 12, 2016.

[14] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME Assessment Policy*).

[15] A list of topics discussed in the Preliminary Decision Memorandum is provided at Appendix I to this notice.

[16] Normally, the Department discloses to interested parties the calculations performed in connection with the preliminary results of review within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department has preliminarily determined to rescind this review with respect to Fedmet and that Fengchi and RHI had no shipments during the POR, and because all other companies subject to this review are receiving the PRC-wide entity rate, there are no calculations to disclose.

[17] *See* 19 CFR 351.309(c)(1)(ii).

[18] *See* 19 CFR 351.309(d).

[19] *See* 19 CFR 351.309(c)(2), (d)(2).

[20] *See* 19 CFR 351.310(c).

[21] *Id.*

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of any issues raised in case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[23] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the current rate for the PRC-wide entity (*i.e.,* 236 percent).

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales data submitted by companies individually examined during the administrative review, the Department will instruct CBP to liquidate such entries for the PRC-wide entity. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the PRC-wide entity.[24] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For any companies listed that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 1, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Case History
3. Scope of the Order
4. Discussion of the Methodology
   a. Non-Market Economy Status
   b. Companies That Did Not Establish Their Eligibility for a Separate Rate
   c. Preliminary Determination of No Shipments
   d. Preliminary Partial Rescission of Review
5. Recommendation

[FR Doc. 2016–21767 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–DS–P

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[22] *See* 19 CFR 351.310(d).

[23] *See* 19 CFR 351.212(b).

[24] For a full discussion of this practice, *see NME Assessment Policy.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on small diameter graphite electrodes (SDGEs) from the People's Republic of China (the PRC). The period of review (POR) is February 1, 2014, through January 31, 2015. For the final results, we find that certain companies sold subject merchandise at less than normal value.

DATES: Effective September 9, 2016.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Michael A. Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–0665 or (202) 482–0198, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2016, the Department published the preliminary results of the administrative review of the antidumping duty order on SDGEs from the PRC.[1] We received case and rebuttal briefs with respect to the *Preliminary Results.* On June 7, 2016, the Department extended the deadline for the final results by 60 days to September 6, 2016.[2] The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order includes all small diameter graphite electrodes with a nominal or actual diameter of 400 millimeters (16 inches) or less and graphite pin joining systems for small diameter graphite electrodes. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8545.11.0010, 3801.10, and 8545.11.0020. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[3]

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[1] *See Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review In Part; 2014–2015,* 81 FR 12468 (March 9, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum from Dmitry Vladimirov, International Trade Compliance Analyst, Office I, Antidumping and Countervailing Duty Operations to Deputy Assistant Secretary Christian Marsh entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated June 7, 2016.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.*

Changes Since the Preliminary Results

Based on our analysis of comments received, we made revisions, including the valuation of certain factors of production, which changed the results for one individually examined company, the Fangda Group,[4] but did not change the results for the other individually examined company, Fushun Jinly Petrochemical Co., Ltd. (Fushun Jinly). For further details on the changes we made for these final results, *see* the company-specific analysis memoranda, the Issues and Decision Memorandum, and the final surrogate value memorandum, dated concurrently with this notice.

Rate for Non-Examined Separate Rate Respondent

In these final results of the review, we calculated a zero or *de minimis* weighted-average dumping margin for Fushun Jinly, and a weighted-average dumping margin above *de minimis* for the Fangda Group. Accordingly, we used the weighted-average dumping margin calculated for the Fangda Group, which is 11.49 percent, as the rate for Xuzhou Jianglong Carbon Products Co., Ltd. (Xuzhou Jianglong), a company that was not individually examined and is eligible for a separate rate.[5]

Final Results of the Review

As a result of this administrative review, we determine that the following weighted-average dumping margins exist for the period February 1, 2014, through January 31, 2015:

Company	Margin (percent)
Fangda Group	11.49
Fushun Jinly Petrochemical Carbon Co., Ltd	0.00
Xuzhou Jianglong Carbon Products Co., Ltd	11.49

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the final results, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For entries of subject merchandise during the period of review produced by Fushun Jinly, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties because Fushun Jinly's weighted-average dumping margin in these final results is *de minimis*.[6] For customers or importers of the the Fangda Group for which we do not have entered values, we will calculate customer- (or importer-) specific per unit duty assessment rates based on the ratio of the total amount of dumping calculated for the customer's (or importer's) examined sales of subject merchandise to the total sales quantity associated with those sales, in accordance with 19 CFR 351.212(b)(1). For certain customers or importers of the Fangda Group for which we received entered-value information, we will calculate an antidumping duty assessment rate based on customer-/importer-specific *ad valorem* rate in accordance with 19 CFR 351.212(b)(1). For Xuzhou Jianglong, the assessment rate is equal to the weighted average dumping margin calculated for the Fangda Group, or 11.49 percent. For entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate of 159.64 percent.[7]

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) No cash deposit will be required for subject merchandise exported by Fushun Jinly; (2) for subject merchandise exported by the Fangda Group and Xuzhou Jianglong, the cash deposit rate will be the rate established in these final results of review for each exporter as listed above; (3) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (4) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity, which is 159.64 percent; (5) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

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[3] *See* Memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled, "Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China; 2014–2015," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum), at 2–3.

[4] We refer to the Fangda Group as a single entity pursuant to 19 CFR 351.401(f)(1). *See Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part,* 73 FR 49408, 49411–12 (August 21, 2008) (where we collapsed the individual members of the Fangda Group: Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd.), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049 (January 14, 2009).

[5] *See* Issues and Decision Memorandum at 3–4 for a full discussion.

[6] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[7] *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049, 2054–55.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 2, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Separate Rates
V. Discussion of the Issues
  Comment 1: Eligibility for Separate Rate (Fangda Group and Xuzhou Jianglong)
  Comment 2: Whether Xuzhou Jianglong's Sale is *Bona Fide*
  Comment 3: Consumption of Needle Coke (Fangda Group and Fushin Jinly)
  Comment 4: Whether U.S. Sales are *Bona Fide* (Fangda Group and Fushin Jinly)
  Comment 5: Universe of Sales (Fangda Group)
  Comment 6: Reporting of Forming Scrap (Fangda Group)
  Comment 7: Claim for Silicon Carbide By-Product Offset (Fushin Jinly)
  Comment 8: Valuation of Certain By-Products/Scrap Items (Fangda Group and Fushin Jinly)
  Comment 9: Date of Sale (Fangda Group and Fushin Jinly)
  Comment 10: Tolling Data (Fangda Group)
  Comment 11: VAT Adjustment Calculation (Fangda Group)
VI. Recommendation

[FR Doc. 2016–21782 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE872

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet October 3, 2016 through October 11, 2016, in Anchorage, AK.

DATES: The meetings will be held October 3, 2016 through October 11, 2016. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W. 3rd Ave., Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. in the Aleutian Room on Wednesday, October 5 continuing through Tuesday, October 11, 2016. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the King Salmon/Iliamna Room on Monday, October 3 and continue through Thursday, October 6, 2016. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Dillingham/Katmai Room on Tuesday, October 4 and continue through Saturday, October 8, 2016. The Ecosystem Committee will meet on Tuesday, October 4, 2016, from 8 a.m. to 5 p.m. (room to be determined). The Halibut Management Committee will meet on Tuesday, October 4, 2016, from 8 a.m. to 12 p.m. (room to be determined). The Enforcement Committee will meet on Tuesday, October 4, 2016, from 1 p.m. to 4 p.m. (room to be determined).

Agenda

Monday, October 3, 2016 Through Tuesday, October 11, 2016

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) Executive Director's Report (including ROA, allocation policy directive, legislative update; 40th Anniversary celebration update)
(2) NMFS Management Report
(3) ADF&G Report
(4) U.S. CG Report
(5) U.S. FWS Report
(6) Protected Species Report
(7) BSAI Crab Harvest Specifications for 6 Stocks
(8) Groundfish Harvest Specifications; Stock Structure Report; Chinook Salmon 3-River Index
(9) Electronic Monitoring Integration
(10) 2017 Observer Program Annual Deployment Plan
(11) Observer Lead Level 2
(12) Halibut/Sablefish IFQ Program
(13) Area 4 Halibut IFQ Leasing
(14) BSAI Halibut Abundance-Based PSC
(15) Halibut DMR's Methodology
(16) EFH Descriptions
(17) EFH Non-Fishing Effects
(18) EFH Fishing Effects Methods/Criteria
(19) Staff Tasking

The Advisory Panel will address most of the same agenda issues as the Council except B reports.

The SSC agenda will include the following issues:

(1) BSAI Crab Harvest Specifications for 6 Stocks
(2) Groundfish Harvest Specifications; Stock Structure Report; 3-River Index
(3) Electronic Monitoring Integration
(4) 2017 Observer Program Annual Deployment Plan
(5) BSAI Halibut Abundance-Based PSC
(6) Halibut/Sablefish IFQ Program
(7) Area 4 Halibut IFQ Leasing
(8) Halibut DMR's Methodology
(9) EFH Descriptions
(10) EFH Non-Fishing Effects
(11) EFH Fishing Effects Methods/Criteria

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Councils primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21713 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE864

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public hearing to solicit public comments on Electronic Reporting Requirements for For-Hire Vessels via webinar.

DATES: The meeting will convene Wednesday, September 28, 2016, from 6 p.m. to 9 p.m. EDT.

ADDRESSES: The meeting will be held via webinar; you may register at: *https://attendee.gotowebinar.com/register/3181204175348645889*.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. John Froeschke, Fishery Biologist-Statistician, Gulf of Mexico Fishery Management Council; *john.froeschke@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The agenda for the following webinar is as follows: Council staff will brief the public on the Generic For-Hire Reporting Amendment. This Amendment would require electronic reporting for federally permitted for-hire vessels harvesting species managed in the Reef Fish and Coastal Migratory Pelagic (CMP) species in the Gulf of Mexico. Following the presentation, Council staff will open the meeting for questions and public comments.

Meeting Adjourns

Please register for Public Hearing: Generic Amendment to Require Electronic Reporting For-hire Vessels on September 28, 2016, 6 p.m. EDT at: *https://attendee.gotowebinar.com/register/3181204175348645889*.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the File Server link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both "gulfguest". Click on the "Library Folder", then scroll down to "Generic For-Hire Electronic Reporting".

Although other non-emergency issues not on the agenda may come before the staff for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the staff will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Dated: September 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21728 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE874

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Northeast Trawl Advisory Panel (NTAP) will hold a meeting.

DATES: The meeting will be held on Thursday, September 29, 2016, from 9 a.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Courtyard Marriott Boston Logan Airport, 225 William McClellan Highway, Boston, MA 02128; telephone: (617) 569–5250.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* will also have details on the proposed agenda and briefing materials.

SUPPLEMENTARY INFORMATION:

Agenda

The NTAP is a joint advisory panel of the Mid-Atlantic and New England Fishery Management Councils composed of Council members, fishing industry, academic, and government and non-government fisheries experts. The NTAP was established to bring commercial fishing, fisheries science, and fishery management professionals in the northeastern U.S. together to identify concerns about regional research survey performance and data, to identify methods to address or mitigate these concerns, and to promote mutual understanding and acceptance of the results of this work among their peers and in the broader community. Topics to be discussed at the meeting include membership changes; report of the NTAP Working Group meeting (August 2, 2016); results of witch flounder gear efficiency study and next steps for stock assessment; results of research on increasing the number of survey stations; group discussion on initial planning for 10 to 20-day field program; introduction of NEFSC Working Group on transition options (*i.e.*, to transition to industry based sampling platforms—in full or in part); and next steps for NTAP including discussion about additional funding for future meetings.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21730 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE779

General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission and Scientific Advisory Subcommittee to the General Advisory Committee; Conference Call Announcement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: NMFS announces a conference call of the General Advisory Committee (GAC) to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) and the Scientific Advisory Subcommittee (SAS) to the GAC on September 23, 2016. The meeting and call topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The conference call with the GAC and SAS will be held on September 23, 2016, from 10 a.m. to 11:30 a.m. Pacific Daylight Time (or until business is concluded).

ADDRESSES: The call will be held via conference line: 1–888–790–6181, passcode: 55049.

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, West Coast Region, NMFS, at *Taylor.Debevec@noaa.gov,* or at (562) 980–4066.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended, the U.S. Department of Commerce, in consultation with the Department of State (the State Department), appoints a GAC to the U.S. Section to the IATTC, and a SAS that advises the GAC. The U.S. Section consists of four U.S. Commissioners to the IATTC and representatives of the State Department, NOAA, Department of Commerce, other agencies of the U.S. Government, and other stakeholders. The purpose of the GAC is to advise the U.S. Section with respect to scientific research about, and management of, tuna and tuna-like species in the eastern tropical Pacific Ocean conducted by the IATTC, with particular reference to development of U.S. policies, positions, and negotiating tactics. The purpose of the SAS is to advise the GAC on matters of science. NMFS West Coast Region provides administrative support for the GAC and SAS. The meetings of the GAC and SAS shall generally be open to the public, unless the meetings go into executive session for specific topics. The time and manner of public comment will be at the discretion of the chairs for the GAC and SAS.

The 90th meeting of the IATTC was held in La Jolla, CA, from June 27 to July 1, 2016, but not all agenda items were addressed and the meeting was temporarily adjourned. As such, the 90th meeting of the IATTC will be resumed from October 12 to October 14, 2016, in La Jolla, CA. For more information on the resumed meeting, please visit the IATTC's Web site: *https://www.iattc.org/MeetingsENG.htm.*

GAC and SAS Call Topics

The call topics will include, but are not limited to, the following:

1. Formulation of advice on issues that may arise at the resumed 90th meeting of the IATTC, including the IATTC staff's recommended conservation measures, U.S. proposals, and proposals from other IATTC members; and
2. Other issues as they arise.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Taylor Debevec (see **FOR FURTHER INFORMATION CONTACT**) by September 16, 2016.

Authority: 16 U.S.C. 951 *et seq.*

Dated: September 6, 2016.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21765 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE865

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting via webinar of its Data Collection Technical Committee.

DATES: The meeting will convene Thursday, September 29, 2016, from 9 a.m. to 1 p.m. EDT.

ADDRESSES: The meeting will be held via webinar; you may register at: *https://attendee.gotowebinar.com/register/5388009774335661059.*

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. John Froeschke, Fishery Biologist-Statistician, Gulf of Mexico Fishery Management Council; *john.froeschke@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

The Data Collection Technical Committee will meet to discuss the minimum data elements necessary to implement electronic reporting of for-hire fisheries data in the Gulf of Mexico. The Technical Committee will review data elements collected by existing for-hire programs in the Gulf and other regions as well as the data elements recommended for consideration by the National Marine Fisheries Service Southeast Regional Office. The objectives are to improve timeliness and data quality of fisheries data from the federal for-hire sector that will be used to support fisheries science and management. The Technical Committee is expected to discuss and provide recommendations to the Gulf of Mexico Fishery Management Council regarding about the minimum data elements to achieve the goals of the program.

Meeting Adjourns

Please register for Data Collection Technical Committee meeting on Thursday, September 29, 2016, 9 a.m. EDT at: *https://*

attendee.gotowebinar.com/register/5388009774335661059.

After registering, you will receive a confirmation email containing information about joining the webinar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the File Server link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both "gulfguest". Click on the "Library Folder", then scroll down to "Data Collection Technical Committee".

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Technical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Technical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Dated: September 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21729 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

NATIONAL SCIENCE FOUNDATION

[Docket No. 160831803–6803–01]

RIN 0660–XC031

National Broadband Research Agenda

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce; National Science Foundation.

ACTION: Notice, request for comments.

SUMMARY: In furtherance of the Broadband Opportunity Council's recommendation to improve data collection, analysis and research on broadband, the National Telecommunications and Information Administration (NTIA) and the National Science Foundation (NSF) request public comments to inform the development of a National Broadband Research Agenda (Agenda) in collaboration with the Networking and Information Technology Research and Development (NITRD) Program and other agencies that form the Council. This Agenda will reflect the most significant opportunities for data collection, analysis, and research to keep pace with, and take advantage of, the massive digital changes that permeate our economy and society.

DATES: Submit written comments on or before 5 p.m. Eastern Daylight Time on October 11, 2016.

ADDRESSES: Written comments may be submitted by email to: *NBRArfc2016@ntia.doc.gov.* Include "National Broadband Research Agenda" in the subject line of the message. Comments submitted by email should be machine-readable and should not be copy-protected. Written comments may also be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4887, Attn: National Broadband Research Agenda, Washington DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number on each page of the submission. Enclose a CD or DVD version of your submission labeled with the name and organization of the filer. All comments received are a part of the public record and will generally be posted to *https://www.ntia.doc.gov/federal-register-notice/2016/comments-national-broadband-research-agenda* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by commenters may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NTIA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Francine Alkisswani, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4621, Washington, DC 20230; telephone: (202) 482–5560; email: *falkisswani@ntia.doc.gov;* or Jack T. Brassil, Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Boulevard, Room 1175.31N, Arlington, VA 22230; telephone: (703) 292–8950; email: *jbrassil@nsf.gov.* Please direct media inquiries to NTIA's Office of Public Affairs; email: *press@ntia.doc.gov;* telephone: (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background

In March 2015, President Obama created the Broadband Opportunity Council (Council), composed of 25 federal departments and agencies, to determine actions that the federal government could take to eliminate barriers to broadband deployment, competition, and adoption and encourage investment through executive actions within the scope of existing agency programs, missions, and budgets.[1] The U.S. Departments of Commerce and Agriculture co-chaired the Council.

In September 2015, the White House released the Council's report, which described 36 concrete steps the member agencies would take to reduce barriers, incentivize investment, promote best practices, align funding policies and decisions, and support broadband deployment and adoption.[2] One of the actions in the report called for NTIA and NSF to develop a national broadband research agenda with input from other federal agencies and the broader research community. This Notice seeks recommendations from all members of the research community to support the development of the Agenda. This input will supplement input received through an NSF-sponsored visioning workshop.[3]

II. Objectives of This Notice

This Notice seeks input to improve data collection, analysis, research, and their applications for the benefit of broadband policy development, program implementation, and program evaluation. A robust broadband research agenda will also help external stakeholders, especially those whose research initiatives rely on federal data, reporting, funding, coordination, and other federal resources and support. This Notice seeks such input in four specific areas: (i) Broadband technology; (ii) broadband deployment, adoption, and utilization by individual, business, and institutional users; (iii) assessment of economic and social impacts; and (iv) opportunities for federal leadership in data collection, research, and overall coordination.

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[1] The White House, Office of the Press Secretary, *Presidential Memorandum—Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training* (March 23, 2015), *available at https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expanding-broadband-deployment-and-adoption-addr.*

[2] Broadband Opportunity Council, *Report and Recommendations Pursuant to the Presidential Memorandum on Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training* (Aug. 20, 2015) at 12, *available at https://www.ntia.doc.gov/files/ntia/publications/broadband_opportunity_council_report_final.pdf.*

[3] The National Science Foundation (NSF) funded the Pennsylvania State University, Institute of Information Policy (IIP) to organize a visioning workshop with leading experts in academia, industry, and government on June 16–17, 2016, at the NSF in Arlington, Virginia. See the details of the "Broadband 2021" workshop at *https://broadband.ist.psu.edu/.*

The success of the Agenda requires not only high-impact, cutting-edge proposals across data collection, analysis, and research, but also an overall strategic plan that is achievable. Thus, through this Notice, NTIA and NSF seek recommendations, best practices, and solutions to current challenges with regard to: Promising research and analytical methodologies; effective approaches for data collection and sharing; opportunities for better alignment and coordination for these research efforts across all federal and external stakeholders; funding strategies with suggestions for prioritization and public-private resource sharing; and possible changes to federal policies and programs that could enhance broadband research. NTIA and NSF also encourage interested parties to recommend any other suggestions (*e.g.,* research topics, implementation approaches) if the concepts are not articulated in this Notice.

III. Request for Comments

Instructions for Commenters: Commenters are encouraged to address any or all of the following questions. Commenters responding to specific questions should label the response with a question number. Comments that contain references to studies, research, and other empirical data that are not widely published should include copies of (or links to) the referenced materials with the submitted comments.

For any response, commenters may wish to consider describing specific goals and action(s) that NTIA and/or NSF, or other federal agencies, may take (independently or in conjunction with the private sector) to achieve those goals; the benefits and costs associated with the action(s); whether the proposal is agency-specific or interagency; the rationale and evidence to support the proposal; and the roles of other stakeholders.

A. Broadband Technology

Comments under this heading should address research and evaluation as related to broadband technology development and innovation. The broadband technology landscape continues to reflect rapid innovation and advancement, across all levels of the broadband technology value chain, *e.g.,* platforms, networks, devices, services, applications. These advances have yielded a myriad of new products and services, and improved the quality and performance of existing ones. Questions related to technology research follow:

1. What are the critical data and research needs in the areas of broadband technology and innovation?

2. What specific technology research proposals, and associated methodologies, should be prioritized to support the advancement of broadband technology? And why?

3. What specific technology research proposals can support federal efforts to foster the access and adoption of broadband technology across rural areas, and other unserved and underserved segments, such as population groups that have traditionally under-utilized broadband technology (*e.g.,* seniors, low-income families, persons with disabilities)?

B. Broadband Access and Adoption

Comments under this heading should address research and evaluation as related to programs, services, and applications that drive broadband access, adoption, and utilization for individuals and their families, businesses, and institutions. Questions related to broadband deployment and adoption follow:

4. What are the critical data and research needs in the areas of broadband deployment and access?

5. What specific research proposals, and associated methodologies, regarding broadband access should be prioritized? And why?

6. What are specific areas for federally-supported research as related to key market trends that impact broadband deployment, including business models, public-private partnerships, sustainability drivers, the removal of regulatory barriers?

7. What are the critical data and research needs in the areas of broadband adoption and utilization?

8. What specific research proposals, and associated methodologies, regarding broadband adoption and utilization should be prioritized? And why?

9. What specific research and data are needed to understand how rural residents and other population groups that have traditionally under-utilized broadband technology (*e.g.,* seniors, low-income families, persons with disabilities) can better adopt and use broadband?

C. Socioeconomic Impacts

Comments under this heading should address research and evaluation as related to measuring the social and economic impacts of deploying and/or using broadband. Understanding the economic and social impact of broadband on the American society influences the prioritization, design, and evaluation of federal policies and programs. Questions related to socioeconomic impact follow:

10. What are the critical data and research needs in the area of broadband and its economic and social impact?

11. What specific research proposals, and associated methodologies, regarding the socioeconomic impact of broadband should be prioritized?

12. Are there specific socioeconomic research areas that can help measure the effectiveness of federal programs seeking to foster broadband access, adoption, or competition?

D. Opportunities for Federal Leadership in Data Collection and Research

Comments under this heading should address proposals for implementing the suggestions and recommendations discussed above. The Agenda will include a strategic plan that includes specific initiatives, measurable goals, and identification of the key resources necessary for implementation. Resources and leadership will be required across a multitude of stakeholders (*e.g.,* federal government, industry, academia). Questions related to opportunities for federal leadership and engagement with stakeholders follow:

13. What opportunities exist to improve the sharing of research from federal research programs with external stakeholders (*e.g.,* industry, academia)? Likewise, how can external stakeholders better share their research with federal agencies?

14. What are suggestions for enhancing cross-disciplinary collaboration in broadband research?

15. Given limited federal budgets and existing research efforts led by industry, academia, and other external groups, what specific role should the federal government play in the area of broadband research (*e.g.,* funding, data gathering, coordination)?

16. Are there opportunities to collect new broadband-related data or expand current data sets within federal programs that fund and/or produce research?

17. What data (whether public or commercial/proprietary) would

facilitate ground-breaking research related to broadband, if that data were to become available?

18. What are possible changes to federal policies and programs that could enhance broadband research?

19. What are recommendations for standardizing broadband and commonly-used demographic terms across the research community? How can these terms be operationalized to ensure comparability of data?

Dated: September 6, 2016.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

Suzanne H. Plimpton,

Management Analyst, Office of the General Counsel, National Science Foundation.

[FR Doc. 2016–21771 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket ID: PTO–C–2016–0033; Docket Type: Nonrulemaking; Docket Phase: Notice]

National Medal of Technology and Innovation Nomination Evaluation Committee Meeting

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of closed meeting.

SUMMARY: The National Medal of Technology and Innovation (NMTI) Nomination Evaluation Committee will meet in closed session on September 9, 2016. The primary purpose of the meeting is to discuss the relative merits of persons, teams, and companies nominated for the 2015 NMTI.

DATES: The meeting will convene on September 9, 2016, at approximately 9 a.m., and adjourn at approximately 5 p.m.

ADDRESSES: The meeting will be held at the United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: John Palafoutas, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box, Alexandria, VA 22313; telephone (571) 272–9821; or by electronic mail: *nmti@uspto.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, notice is hereby given that the NMTI Nomination Evaluation Committee, chartered to the United States Department of Commerce, will meet at the United States Patent and Trademark Office campus in Alexandria, Virginia.

The Secretary of Commerce is responsible for recommending to the President prospective NMTI recipients. The NMTI Nomination Evaluation Committee evaluates the nominations received pursuant to public solicitation and makes its recommendations for the Medal to the Secretary. Committee members are distinguished experts in the fields of science, technology, business, and patent law drawn from both the public and private sectors and are appointed by the Secretary for three-year terms.

In order to complete the 2015 NMTI selection process prior to the next cycle of awards, USPTO asked the members of the Evaluation Committee to meet as soon as possible. Because the committee is newly formed and has multiple scheduling conflicts, September 9, 2016 is the best date available for the committee to meet in order to make timely recommendations to the Secretary of Commerce.

The NMTI Nomination Evaluation Committee was established in accordance with the FACA. The Committee meeting will be closed to the public in accordance with the FACA and 5 U.S.C. 552b(c)(6) and (9)(B), because the discussion of the relative merit of the Medal nominations is likely to disclose information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy and premature disclosure of the Committee's recommendations would be likely to significantly frustrate implementation of the Medal Program.

The Chief Financial Officer and Assistant Secretary for Administration, United States Department of Commerce, formally determined on September 6, 2016 pursuant to Section 10(d) of the FACA, that the meeting may be closed because Committee members are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6) and (9)(B). Due to closure of this meeting, copies of any minutes of the meeting will not be available. A copy of the determination is available for public inspection at the United States Patent and Trademark Office.

Dated: September 7, 2016.

Russell Slifer,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2016–21871 Filed 9–8–16; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and a service from the Procurement List that was previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before 10/9/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

Product Name(s)—NSN(s): 6530–01–163–3704—Cup, Specimen

Contracting Activity: Department of Veterans Affairs

Product Name(s)—NSN(s):

6532–00–914–3069—Shirt, Operating, Surgical

6532–00–914–3070—Shirt, Operating, Surgical

6532–00–914–3071—Shirt, Operating, Surgical

Contracting Activity: Defense Logistics Agency Troop Support

Product Name(s)—NSN(s): 7350–01–138–0022—Pitcher, Water

Contracting Activity: Department of Veterans Affairs

Service

Service Type: Administrative/General Support Service

Mandatory for: GSA, Southwest Supply Center, 819 Taylor Street, Fort Worth, TX

Mandatory Source(s) of Supply: Travis Association for the Blind, Austin, TX

Contracting Activity: General Services Administration, FPDS Agency Coordinator

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–21735 Filed 9–8–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 10/9/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 8/5/2016 (81 FR 51865–51866) and 8/26/2016 (81 FR 58913–58917), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8415–00–NSH–0376—Coat, Combat, BDU, Army, Urban Camouflage, XS–XS
8415–00–NSH–0377—Coat, Combat, BDU, Army, Urban Camouflage, XS–S
8415–00–NSH–0378—Coat, Combat, BDU, Army, Urban Camouflage, XS–R
8415–00–NSH–0379—Coat, Combat, BDU, Army, Urban Camouflage, SX–XS
8415–00–NSH–0380—Coat, Combat, BDU, Army, Urban Camouflage, S–XS
8415–00–NSH–0381—Coat, Combat, BDU, Army, Urban Camouflage, SS
8415–00–NSH–0382—Coat, Combat, BDU, Army, Urban Camouflage, SR
8415–00–NSH–0383—Coat, Combat, BDU, Army, Urban Camouflage, SL
8415–00–NSH–0384—Coat, Combat, BDU, Army, Urban Camouflage, SXL
8415–00–NSH–0385—Coat, Combat, BDU, Army, Urban Camouflage, M–XXS
8415–00–NSH–0386—Coat, Combat, BDU, Army, Urban Camouflage, M–XS
8415–00–NSH–0387—Coat, Combat, BDU, Army, Urban Camouflage, M–S
8415–00–NSH–0388—Coat, Combat, BDU, Army, Urban Camouflage, M–R
8415–00–NSH–0389—Coat, Combat, BDU, Army, Urban Camouflage, M–L
8415–00–NSH–0390—Coat, Combat, BDU, Army, Urban Camouflage, M–XL
8415–00–NSH–0391—Coat, Combat, BDU, Army, Urban Camouflage, L–XS
8415–00–NSH–0392—Coat, Combat, BDU, Army, Urban Camouflage, L–S
8415–00–NSH–0393—Coat, Combat, BDU, Army, Urban Camouflage, L–R
8415–00–NSH–0394—Coat, Combat, BDU, Army, Urban Camouflage, L–L
8415–00–NSH–0395—Coat, Combat, BDU, Army, Urban Camouflage, L–XL
8415–00–NSH–0396—Coat, Combat, BDU, Army, Urban Camouflage, XL–R
8415–00–NSH–0397—Coat, Combat, BDU, Army, Urban Camouflage, XL–LL

Contracting Activity: Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division

Services

Service Type: Mess Attendant Service
Mandatory for: 185th Air Refueling Wing Dining Hall, Building 263, 2920 Headquarters Avenue, Sioux City, IA
Service Type: Custodial Service
Mandatory for: 185th Air Refueling Wing, Buildings 234 and 241, 2920 Headquarters Avenue, Sioux City, IA
Mandatory Source(s) of Supply: Goodwill Community Rehabilitation Services, Inc., Sioux City, IA
Contracting Activity: Dept of the Army, W7M8 USPFO ACTIVITY IA ARNG
Service Type: Administrative/General Support Service
Mandatory for: GSA, Southwest Supply Center, 819 Taylor Street, Fort Worth, TX
Mandatory Source(s) of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–21736 Filed 9–8–16; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday September 14, 2016, 9:30 a.m.–10:30 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: Decisional Matter: Changing Tables: Notice of Proposed Rulemaking.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

TIME AND DATE: Wednesday, September 14, 2016; 10:45 a.m.–1:00 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Matters: The Commission staff will brief the Commission on the status of various compliance matters.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 6, 2016.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2016–21807 Filed 9–7–16; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0032]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of the Army proposes to alter a system of records, A0001–20 SALL, entitled "Congressional Inquiry File," last published at 66 FR 13054, March 2, 2001. The system of records exists to respond to inquiries from members of Congress who request information from the Department of Defense on behalf of their constituents.

This update reflects considerable administrative changes that in sum warrant an alteration to the systems of records notice. The applicable DoD Routine Uses have been incorporated in the notice to provide clarity for the public. There are also modifications to the system location, categories of individuals, categories of records, authority, purpose, routine uses, storage, retrievability, safeguards, retention and disposal, system managers and address, notification and record access procedures, and contesting record procedures to improve readability and update the notice to meet current departmental standards.

DATES: Comments will be accepted on or before October 11, 2016. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3827 or by phone at 703–428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 19, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I of OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: September 6, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001–20 SALL

SYSTEM NAME:

Congressional Inquiry File (March 2, 2001, 66 FR 13054)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Chief, Congressional Inquiry Division, Office of the Chief of the Legislative Liaison, Office of the Secretary of the Army, 1600 Army Pentagon, Washington, DC 20310–1600."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who write to a Member of Congress requesting that the Member solicit information from the Department of the Army on their behalf."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Individual's name and correspondence to the Member of Congress, Congressional Member's name, date of the Member's correspondence or email to the Army, Department of the Army's correspondence in response to the inquiry, inquiry tracking number, and relevant supporting documentation.

Records may include personally identifiable information (PII) as volunteered by the individual in correspondence or documentation received from the Congressional Member. Such information is not requested by or disclosed from the department in administration of these records."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 1034, Protected Communications; Prohibition of Retaliatory Personnel Actions; 10 U.S.C. 3013, Secretary of the Army; DoD Instruction 5400.04, Provision of Information to Congress; Army Regulation 1–20, Legislative Liaison."

PURPOSE(S):

Delete entry and replace with "To conduct necessary research and/or investigations to provide information responsive to Congressional inquiries."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*"

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Individual's full name, date of the Congressional Member's correspondence, Congressional Member's name, and subject of the inquiry."

SAFEGUARDS:

Delete entry and replace with "Records are maintained on a password protected network accessible to authorized personnel only. Approved users ensure that electronic records used are maintained in controlled areas accessible only to authorized personnel. Access to electronic files is restricted by use of common access cards (CACs) and is accessible only by users with an authorized account. The systems are maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards and locks."

RETENTION AND DISPOSAL:

Delete entry and replace with "Information on congressional inquiries on all matters within the scope and activity of the Department of the Army are maintained for two years, then purged from the system."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Congressional Inquiry Division, Office of the Chief of the Legislative Liaison, Office of the Secretary of the Army, 1600 Army Pentagon, Washington, DC 20310–1600."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Chief, Congressional Inquiry Division, Office of the Chief of the Legislative Liaison, Office of the Secretary of the Army, 1600 Army Pentagon, Washington, DC 20310–1600.

For verification purposes requests should include the individual's full name, the Congressional Member's name, and subject of the inquiry.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' "

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Congressional Inquiry Division, Office of the Chief of the Legislative Liaison, Office of the Secretary of the Army, 1600 Army Pentagon, Washington, DC 20310–1600.

For verification purposes requests should include the individual's full name, the Congressional Member's name, and subject of the inquiry.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' "

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in 32 CFR part 505, Army Privacy Program or may be obtained from the system manager."

* * * * *

[FR Doc. 2016–21768 Filed 9–8–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0090]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Office of the Secretary of Defense proposes to add a new system of records, DSCA 06, entitled "Defense Security Assistance Management System (DSAMS)." The system will facilitate case development, implementation, and management of the Foreign Military Sales and International Military Education and Training (IMET) Programs. The DSAMS Training Module (DSAMS–TM) is used to manage training activities of individuals who have been selected by the U.S. government to attend various Department of Defense (DoD) security cooperation training courses.

In establishing this system of records, the Defense Security Cooperation Agency reviewed the safeguards established for the system to ensure they are compliant with the DoD's requirements and are appropriate to the sensitivity of the information stored within the system. Any specific routine uses have been reviewed to ensure the minimum amount of personally identifiable information is provided to other federal agencies requesting emergency language support to facilitate U.S. efforts on the war on terrorism or in furtherance of national security objectives.

DATES: Comments will be accepted on or before October 11, 2016. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 23, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: September 6, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSCA 06

SYSTEM NAME:

Defense Security Assistance Management System (DSAMS)

SYSTEM LOCATION(S):

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC), Attention: Defense Security Assistance Management System (DSAMS–SA7), Building 3900, 8750 Industrial Boulevard, Tinker AFB, OK 73145.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian, military, contractor personnel (collectively, "U.S. personnel"), and individuals with dual citizenship with the U.S., selected to attend DoD security cooperation training (collectively, "students").

CATEGORIES OF RECORDS IN THE SYSTEM:

U.S. Personnel Data: Full name, military rank, organization, office telephone number and address.

Student Data: Full name and alias, gender, citizenship, country of service, country service number, nationality, date and place of birth, marital status, physical descriptions, biographical data, email addresses, work and home addresses, work, fax and personal telephone numbers, military rank, military unit, worksheet and student control numbers, student code and U.S. grade equivalent, clearance information, passport and visa information, flight crew position type, dependency data (if accompanied), language capabilities, educational and employment history, training activities and personal preferences (*e.g.* dietary needs, religious accommodations, customs and traditions).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. Chapters 32 and Chapter 39; 10 U.S.C. 134, Under Secretary of Defense for Policy; DoD Directive (DoDD) 5105.65, Defense Security Cooperation Agency (DSCA); DoDD 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation; Army Regulation 12–15, Secretary of the Navy Instruction 4950.4B/Air Force Instruction 16–105, Joint Security Cooperation Education and Training; and DSCA Manual 5105.38–M, Security Assistance Management Manual, Chapter 10, International Training.

PURPOSE(S):

To facilitate case development, implementation, and management of the Foreign Military Sales and International Military Education and Training (IMET) Programs. The DSAMS Training Module (DSAMS–TM) is used to manage training activities of individuals who have been selected by the U.S. government to attend various Department of Defense (DoD) security cooperation training courses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as follows to:

LAW ENFORCEMENT ROUTINE USE:

If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

CONGRESSIONAL INQUIRIES DISCLOSURE ROUTINE USE:

Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DATA BREACH REMEDIATION PURPOSES ROUTINE USE:

A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Worksheet Control Number (WCN), Student Control Number (SCN) or by the individual's name.

SAFEGUARDS:

All DSAMS users with access to the data have valid and current background investigations. Access to DSAMS information is role based. Users of these systems have access to a limited subset of data based on the concept of least privilege/limited access, and write capability, which is limited to specific roles and tracked. In addition, the individual user will not have access to the data, except through their systems security software inherent to the operating system and application, and all access is controlled by authentication methods to validate the approved users. The information is also maintained in secured information systems which are located in controlled access facilities guarded 24 hours a day, seven days a week.

RETENTION AND DISPOSAL:

Permanent. Transfer to the National Archives when no longer required for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Assistance Management System Program Manager, Defense Security Assistance Development Center (DSADC), ATTN: DSAMS PMO, 5450 Carlisle Pike, Building 107 N, Mechanicsburg, PA 17055–2411.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Security Assistance Management System Program Manager, Defense Security Assistance Development Center (DSADC), ATTN: DSAMS PMO, 5450 Carlisle Pike, Building 107 N., Mechanicsburg, PA 17055–2411.

Signed, written requests should include the full name, current address and telephone number, and the name and number of this system of records notice.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the full name, current address and telephone number, and the name and number of this system of records notice.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual or service organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2016–21751 Filed 9–8–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2015–OS–0114]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: The GlobalNET Collection; GlobalNET User Registration Form; OMB Control No. 0704–XXXX.

Type of Request: Existing Collection in Use Without an OMB Control Number.

Number of Respondents: 6000.

Responses per Respondent: 1.

Annual Responses: 6000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 500 hours.

Needs and Uses: The purpose of the GlobalNET system is to provide a collaborative social networking environment/capability where students, alumni, faculty, partners, and other community members and subject matter experts can find relevant and timely information about pertinent subject matter experts and conduct required training. GlobalNET also collects information on students in order to allow regional center personnel to manage students while enrolled at regional centers.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 6, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–21695 Filed 9–8–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0089]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DSCA 04, entitled ''Adjunct Faculty Information Database.'' The Defense Institute of International Legal Studies (DIILS) supports U.S. foreign policy and national security policy with rule of law training and education focused on human rights, international humanitarian law, and the law of armed conflict.

The purpose of the Adjunct Faculty Information Database is to collect supplied information from qualified adjunct faculty members to make preparations for their overseas travel assignments as well as maintain a record of their qualifications for participation in future training programs. This data will also be used as a resource for future travel and training assignments, as a record of adjunct assignments and a basis to identify training requirements for the adjunct faculty.

DATES: Comments will be accepted on or before October 11, 2016. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division Web site at *http://dpcld.defense.gov/*.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on August 19, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: September 6, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSCA 04

SYSTEM NAME:

Adjunct Faculty Information Database (June 7, 2013, 78 FR 34352)

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Military (*e.g.*, Active, National Guard, Reserve, and Coast Guard), civilian and contractor employees, and private sector personnel.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 134, Under Secretary of Defense for Policy; 22 U.S.C. Chapter 32, Foreign Assistance; DoD Directive (DODD) 5105.65, Defense Security Cooperation Agency (DSCA); DoDD 5101.1, DoD Executive Agent; DoDD 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation; and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures Required by International Agreements Routine Use: A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*"

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Training Specialist, Curriculum Department, Defense Institute of International Legal Studies, 441 Elliot Avenue, Newport, RI 02841–1531.

Signed written requests should include the full name, current address and telephone number, and the number of this system of records notice and be signed.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed written requests should include the full name, current address and telephone number, and the number of this system of records notice and be signed.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

* * * * *

[FR Doc. 2016–21742 Filed 9–8–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Management, Department of Education.

ACTION: Notice of deletion of existing system of records under the Privacy Act of 1974.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) deletes the Discrimination Complaints Records System (18–05–04) from its existing

inventory of systems of records subject to the Privacy Act.

DATES: This deletion is effective September 9, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Chew, Director, Office of Equal Employment Opportunity Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–4550. Telephone: (202) 401–0691.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department deletes the Discrimination Complaints Records System (18–05–04) from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletion is not within the purview of subsection (r) of the Privacy Act, which requires submission of a report on a new or altered system of records.

Under OMB Circular A–130 Appendix I, the transmittal letter of a system of records should contain the agency's assurance that the proposed system does not duplicate any existing agency or government-wide systems of records. The Department's system of records entitled ''Discrimination Complaints Records System'' (18–05–04), 64 FR 30106, 30124 (June 4, 1999), is to be deleted because it is duplicative of the government-wide system of records entitled ''Equal Employment Opportunity in the Federal Government Complaint and Appeal Records'' (EEOC/GOVT–1), 67 FR 49338, 49354 (July 30, 2002).

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 2, 2016.

Andrew Jackson,

Assistant Secretary for Management, Office of Management.

[FR Doc. 2016–21776 Filed 9–8–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. BC–001]

Notice of Petition for Waiver of Dyson, Inc. From the Department of Energy Battery Chargers Test Procedures and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and grant of interim waiver, and request for public comment.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Dyson, Inc. (Dyson) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of battery chargers. The waiver request pertains to the battery chargers in Dyson's robotic vacuum cleaner model RB01, marketed as the Dyson 360-Eye (Robot). In its petition, Dyson contends that in order to provide the user with the advanced setting and management features of the Robot, the relevant functionalities and circuitry have to be powered at all times, and consequently, there is no user-controllable switch to disable those non-battery charging functions as the current DOE test procedure contemplates. Consequently, Dyson seeks to use an alternate test procedure to turn off the Non-Battery Charging Functionalities during the charge and maintenance mode test by isolating a terminal of the battery pack using isolating tape. This notice also announces that DOE has granted Dyson an interim waiver from the DOE battery charger test procedure for its specified robotic vacuum cleaner basic model, subject to use of the alternative test procedure as set forth in this notice. DOE solicits comments, data, and information concerning Dyson's petition and its suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with regard to the Dyson petition until October 11, 2016.

ADDRESSES: You may submit comments, identified by Case Number BC–001, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov* Include the case number [Case No. BC–001] in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. BC–001, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Peter Cochran or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–9496 or (202) 586–9507. Email: *Peter.Cochran@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B[1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program that includes the battery charger-containing robotic vacuums that are the focus of this notice.[2] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs during a representative average-use cycle, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for battery chargers is contained in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix Y, *Uniform Test Method for Measuring the Energy Consumption of Battery Chargers*.

DOE's regulations set forth at 10 CFR 430.27 contain provisions that allow a person to seek a waiver from the test procedure requirements for a particular basic model of a type of covered consumer product when: (1) The petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii).

DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l).

The waiver process also allows DOE to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures if it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On April 7, 2016, Dyson filed a petition for waiver from the DOE test procedure for battery chargers under 10 CFR 430.27 for their robotic vacuum cleaner model RB01, marketed as the Dyson 360-Eye (Robot), which is required to be tested using the DOE battery charger test procedure at 10 CFR 430.23(aa) and detailed at 10 CFR part 430, subpart B, appendix Y. In its petition, Dyson asks that the requirement contained in the current DOE test procedure for battery chargers provided in 10 CFR part 430, subpart B, appendix Y, section 4.4, *Limiting Other Non-Battery-Charger Functions,* be waived with regard to testing on the Robot. According to subsection 4.4.b (and a related provision at section 5.6.c.1), any function controlled by the user and not associated with the battery charging process shall be switched off or shall be set to the lowest power-consuming mode.

Dyson asserts that in order to provide the user with the advanced setting and management features of the Robot, the relevant functionalities and circuitry have to be powered at all times. Accordingly, Dyson does not believe it appropriate to make the Non-Battery Charging Functionalities user controllable because they are an integral part of the Robot itself. Therefore, in order to ascertain the true energy consumption characteristics of the battery charger during the test, Dyson seeks permission to switch off the Non-Battery Charging Functionalities by a means that is not controlled by the user.

Dyson also requests an interim waiver from the existing DOE test procedure for immediate relief. As previously noted, an interim waiver may be granted if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(e)(2).

DOE understands that absent an interim waiver, the basic model identified by Dyson in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the alternate procedure and concludes that it will allow for the accurate measurement of the energy use of these products, while alleviating the testing problems associated with Dyson's implementation of battery charger testing for their robotic vacuum cleaner. Consequently, DOE has determined that Dyson's petition for waiver will likely be granted and has decided that it is desirable for public policy reasons to grant Dyson immediate relief pending a determination on the petition for waiver. Dyson requests to use an alternate test procedure that would allow it to turn off the Non-Battery Charging Functionalities during the charge and maintenance mode test under 10 CFR part 430, subpart B, appendix Y, sections 4.4 and 5.6 by isolating a terminal of the battery pack using isolating tape, thereby providing a suitable method for testing these products and for making representations as to their energy efficiency.

III. Summary of Grant of Interim Waiver

For the reasons stated above, DOE has responded positively to Dyson's application for interim waiver from testing for its specified robotic vacuum cleaner basic model through separate correspondence, which includes an Order granting the application for an interim waiver, subject to the certain specifications and conditions. The substance of the Interim Waiver Order is summarized below.

Dyson is required to test and rate the battery charger of the specified robotic vacuum cleaner basic model according to the alternate test procedure as set forth in section IV, "Alternate Test Procedure." Specifically, the interim waiver applies to the following basic model: RB01, marketed as the Dyson 360-Eye (Robot). Dyson is permitted to make representations about the energy use of its battery charger for the robotic vacuum cleaner products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions set forth in the alternate test procedure and such representations fairly disclose the results of such testing in accordance with 10 CFR 429.39.

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[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA), Public Law 114–11 (April 30, 2015).

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Dyson may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g). In addition, DOE notes that granting of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429. See also 10 CFR 430.27(a) and (i).

The interim waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(h) and (l). Furthermore, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may rescind or modify a waiver or interim waiver at any time upon a determination that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. See 10 CFR 430.27(k).

IV. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of products and equipment covered by the statute. (42 U.S.C. 6293(c); 6314(d)) Consistent representations about the energy efficiency of covered products and equipment are important for consumers evaluating products when making purchasing decisions and for manufacturers to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27 and after considering public comments on the petition, DOE will announce its decision as to an alternate test procedure for Dyson in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Dyson shall test the basic model listed in section II according to the test procedure for battery chargers prescribed by DOE at 10 CFR part 430, subpart B, appendix Y, except that under sections 4.4 and 5.6 of appendix Y, Non-Battery Charging Functionalities that cannot be switched off by a user during the charge and maintenance mode test, must be turned off by isolating a terminal of the battery pack using isolating tape.

V. Summary and Request for Comments

Through this notice, DOE announces receipt of Dyson's petition for waiver from the DOE test procedure for battery chargers and announces DOE's decision to grant Dyson an interim waiver from the test procedure for its robotic vacuum cleaner model RB01, marketed as the Dyson 360-Eye (Robot). DOE is publishing Dyson's petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the energy consumption of the battery charger used in Dyson's specified robotic vacuum cleaner. Dyson is required to use this alternate procedure, as specified in section IV of this notice, as a condition of its grant of interim waiver, and after considering public comments on the petition, DOE will announce its decision as to the continued use of this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Ms. Ashley Shaw, Assistant General Counsel, Dyson, Inc., 600 West Chicago Avenue, Suite 275, Chicago, IL 60654. All comment submissions must include the agency name and Case Number BC–001 for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: One copy of the document marked "confidential" with all of the information believed to be confidential included, and one copy of the document marked "non-confidential" with all of the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on August 30, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

April 7, 2016

APPLICATION OF PETITION OF WAIVER

Dyson, Inc. ("Dyson") hereby respectfully submits this Application for Petition of Waiver jointly with an Application for Interim Waiver, to the Department of Energy ("DOE") with regard to the Dyson robotic vacuum cleaner model RB01, marketed as the Dyson 360-Eye ("Robot").

Requirement To Be Waived

This petition asks that the requirement contained in the current DOE test procedure for battery chargers provided in CFR 10 Part 430.23, Appendix Y—"Uniform Test Method for Measuring the Energy Consumption of Battery Chargers," Clause 4.4 (Limiting Other Non-Battery-Charger Functions), be waived with regard to testing on the Robot.

According to Sub-Clause, 4.4.b and the "Charge Mode and Battery Maintenance Mode Test" detailed in Section 5.6, any function controlled by the user and not associated with the battery charging process shall be switched off or shall be set to the lowest power consuming mode.

By virtue of the design characteristics of the Robot, using the prescribed test procedure would cause the machine to be evaluated in a manner not representative of the true energy consumption characteristics of the battery charger because certain functions that affect energy consumption measurements are not controlled by the user and cannot be turned off by the user. However, in order to obtain representative values, these functions should be switched off, and can be by the person performing the test procedure. This petition seeks a waiver of the requirement that these functions must be able to be switched off by the user.

We believe that the aim of the test procedure is to specify a method for quantifying the power consumption of the battery charging function and setting the appropriate test conditions solely by user-controllable means is not a fundamental requirement to achieve that purpose.

Robot Description—Intended Operation and Design Characteristics

The Robot is a robotic vacuum cleaner with integral Li-Ion battery. The battery is contained in a battery pack together with the charging control circuit. The battery pack can be detached by the user, but cannot be charged separately from the machine. The Wi-Fi transceiver can be controlled by the user and can be disabled by the user following the instructions in the operating manual.

The Robot is charged through a cradle powered by a separate, external AC/DC adapter (wall plug type). The charging circuitry is comprised of the external adapter, the cradle, and the battery pack.

The charging control contained in the battery pack is independent from the Robot. Accordingly, it autonomously starts charging the robot when it is in the cradle and turns off charging when the charging process is complete.

The LED-based user interface on the machine enclosure represents the machine's status. It is entirely controlled by the Robot and not by the battery pack circuitry. It can provide a variety of information to the user, including but not limited to, low battery and fault condition alerts.

During the typical operation, the Robot accomplishes its intended functions by powering the motors (vacuuming), the navigation system (sensors), the User Interface, and the connectivity platform, until its control processor detects a low battery state and aims for the cradle.

When the Robot reaches the cradle, the charging function is activated by the battery pack. During charging, the Robot also maintains the User Interface and connectivity platform (''Non-Battery Charging Functionalities'').

The battery is fully charged in approximately two (2) hours. At that point, an electronic switch fitted in the battery pack disconnects the battery from the charging line and the battery charging function enters what the test procedure calls ''maintenance mode.''

The battery pack has a very long shelf life (*i.e.,* the battery would maintain sufficient charge for a long period of time, approximately one year). Therefore, in ''maintenance mode,'' the energy consumption is dedicated only to sustain the Non-Battery Charging Functionalities.

The Non-Battery Charging Functionalities are implemented through a complex control circuitry contained in the Robot architecture and can be summarized as the management of the advanced usage features offered to the user. The user is not only able to clean the house remotely but can do so in the way that best suits his/her habits.

By always having the Non-Battery Charging Functionalities in an active state, while in the cradle, the Robot is able to:

(a) Receive remote commands to start a scheduled clean from the Dyson cloud;

(b) Receive remote commands to start a live clean, either directly from the App or via the Dyson cloud;

(c) Receive software upgrades from the Dyson cloud;

(d) Be configured prior to starting a clean routine via the App;

(e) Be able to respond in a short time to remote user demand with acknowledgement that a cleaning routine has started (no system boot-up);

(f) Send status messages to the App and to the Dyson cloud; and

(g) Send data to the Dyson cloud, including usage stats.

The battery pack may come with two different charging controls:

Battery Control 1—The Non-Battery Charging Functionalities are always powered from the battery terminals. To keep the battery fully charged, the charging function must be periodically re-enabled to top-up the charge. This can be seen in Appendix B.1.

Battery Control 2—When the Robot is in the cradle, the Non-Battery Charging Functionalities are powered directly from the DC supply at the cradle terminals (*i.e.,* indirectly from the mains). The Robot control shares the same power supply of the battery pack (external adapter + cradle) and draws continuous current from the mains. This can be seen in Appendix B.2.

Battery Control 2 will replace Battery Control 1 by the end of 2016.

Grounds for the Petition

In order to provide the user with the advanced setting and management features of the Robot, the relevant functionalities and circuitry have to be powered at all times. Accordingly, we do not believe it is appropriate to make the Non-Battery Charging Functionalities user controllable because they are an integral part of the Robot itself.

Therefore, in order to ascertain the true energy consumption characteristics of the battery charger during the test, we seek permission to switch off the Non-Battery Charging Functionalities by a means that is not controlled by the user.

Proposal

We are seeking permission to turn off the Non-Battery Charging Functionalities during the charge and maintenance mode test by isolating a terminal of the battery pack using isolating tape. A visual description in Appendix A shows which terminal has to be isolated for testing purposes and how it is to be isolated with the tape. A leaflet or a web-link in the user manual could provide similar information.

Currently, the prescribed test method requires the test technician to go well beyond what the user can access (*e.g.,* disassemble the battery pack for the battery discharge test).

The proposed setting where the Non-Battery Charging Functionalities are turned off does not lead to any alteration of the battery charger circuitry or function because the Robot is operating in parallel to it. It simply interrupts the power supply to the Robot and prevents the Non-Battery Charging Functionalities from drawing current from the battery or mains (see Battery Control 1, Battery Control 2, and Appendix B for this distinction).

The following values are typical:

—Power consumption of the Non-Battery Charging Functionalities is approximately 3.5W (including 0.27W used for the User Interface);

—Power consumption in no-battery mode (wall plug external charger + cradle) is 0.48W.

The graphs in Appendix B show the power consumption of the product in charge and maintenance mode for both the actual operation and the proposed test setting.

If our proposal is accepted, we also recommend that the text of clause 4.4.b be modified as follows:

''b. Any function not associated with the battery charging process (*e.g.* the answering machine in a cordless telephone charging base) shall be switched off. If it is not possible to switch such functions off, they shall be set to their lowest power-consuming mode during test.

If it is not possible to achieve this condition by user-controlled settings, the condition may be achieved by alternative means, unless those lead to an alteration of the battery charger circuit or function.''

Hardship and Competitive Disadvantage

In absence of a favorable determination, the Robot design would have to be modified in order to add a switch that would implement the same isolation obtained by the isolating tape.

The cost in addition to the current bill of materials would be around 0.3 USD, but the real burden is that this switch would have to be added only to enable the measurement of the true energy consumption and would not bring any real benefit for the user. Indeed, as prescribed by the test procedure, if the switch is made accessible to users, it could result in inadvertent operations. The reliability of the Robot might be affected, including, but not limited to:

- Preventing the Robot from being controlled remotely as intended;
- Random malfunction and bad user experience; and
- Abrupt abortion of software upgrades with the typical consequences (*i.e.,* software corruption).

The actual cost cannot be easily quantified in advance, but would disparage the Dyson brand.

Likely Success of the Petition

Our proposal is in compliance with the test method's intent of measuring the energy efficiency parameters of battery chargers, as it ensures that such energy consumption is still measured. It does not add unnecessary burden to the work of the test technician when applying the test procedure. It is also a proposal that would benefit other manufacturers of consumer products employing advanced connectivity features by providing more flexibility at evaluating compliance with the relevant energy metrics.

Appendix A—Access to the Battery Terminal

See the following Web site for Appendix A pictures: *http://www.regulations.gov/#!docketDetail;D=EERE-2016-BT-WAV-0034.*

Appendix B—Power Consumption Graphs

(B.1a)
Battery Control 1—Robot control powered from the battery

The battery charger periodically refills the energy used by the non-charging functionalities (red trace). By isolating the terminal only the power drawn by the battery is accounted (blue trace).

See the following Web site for Appendix B.1a graphs: *http://www.regulations.gov/#!docketDetail;D=EERE-2016-BT-WAV-0034.*

(B.1b)
Battery Control 1—Circuit diagram

See the following Web site for Appendix B.1b graphs: *http://www.regulations.gov/#!docketDetail;D=EERE-2016-BT-WAV-0034.*

(B.2a)
Battery Control 2—Robot control powered from the mains

The battery charger provides energy in parallel both to the battery and to the non-charging functionalities (red trace). By isolating the terminal only the power drawn by the battery is accounted (blue trace).

See the following Web site for Appendix B.2a graphs: *http://www.regulations.gov/#!docketDetail;D=EERE-2016-BT-WAV-0034.*

(B.2b)
Battery Control 2—Circuit diagram

See the following Web site for Appendix B.2b graphs: *http://www.regulations.gov/#!docketDetail;D=EERE-2016-BT-WAV-0034.*

[FR Doc. 2016–21749 Filed 9–8–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–88–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Revised Schedule for Environmental Review of the Abandonment and Capacity Restoration Project

This notice identifies the Federal Energy Regulatory Commission (Commission or FERC) staff's revised schedule for the completion of the environmental assessment (EA) for Tennessee Gas Pipeline Company, L.L.C.'s (Tennessee) Abandonment and Capacity Restoration Project. The first notice of schedule, issued on June 30, 2016, identified September 2, 2016 as the EA issuance date. However, Tennessee provided modifications to the proposed facilities that require additional time for staff to consider. Therefore, staff has revised the schedule for issuance of the EA.

Schedule for Environmental Review

Issuance of the EA: November 2, 2016.

90-day Federal Authorization Decision Deadline: January 31, 2017.

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription (*http://www.ferc.gov/docs-filing/esubscription.asp*).

Dated: September 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21748 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–557–000]

Total Peaking Services, LLC; Notice of Schedule for Environmental Review of the Vaporization Capacity Increase and Bog Compressor Project

On September 23, 2015, Total Peaking Services, LLC (Total Peaking) filed an application in Docket No. CP15–557–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain liquefied natural gas facilities. The proposed project is known as the Vaporization Capacity Increase and BOG Compressor Project (Project), and would increase the vaporization send out capacity at Total Peaking's Milford, Connecticut facility from 90 million cubic feet per day (MMcf/d) to 105 MMcf/d, along with the construction and operation of an additional boil-off gas compressor unit.

On October 7, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA	October 14, 2016
90-day Federal Authorization Decision Deadline	January 12, 2017

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project would include modifications at Total Peaking's Milford, Connecticut facility. Total Peaking would remove its existing vaporizers and install a single vaporizer operating at 105 MMcf/d as well as a heater system for the new vaporizer.

Total Peaking would also install a third boil-off gas compressor unit powered by a 150 horsepower electric motor as well as ancillary electrical upgrades.

Background

On November 9, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Vaporization Capacity Increase and BOG Compressor Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The Commission did not receive any comments in response to the NOI.

The U.S. Department of Transportation is a cooperating agency in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP15–557), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: September 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21744 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11175–025]

Crown Hydro, LLC; Minnesota Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486,52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed Crown Hydro, LLC's application for an amendment to original license for the Crown Mill Hydroelectric Project (FERC Project No. 11175), that would be located on the Mississippi River at the U.S. Army Corps of Engineers' (Corps') lock facility in Minneapolis, Minnesota.

Staff prepared a draft environmental assessment (EA), which analyzes the potential environmental effects of amending the license for the project, and concludes that the amended license, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

For further information, contact Mo Fayyad by telephone at (202) 502–8759, or at *mo.fayyad@ferc.gov.*

Dated: September 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21746 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–175–000.

Applicants: Grand View PV Solar Two LLC.

Description: Application for Authorization Under Section 203 of Grand View PV Solar Two LLC.

Filed Date: 8/31/16.

Accession Number: 20160831–5364.

Comments Due: 5 p.m. ET 9/21/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2641–026; ER10–2663–026; ER10–2881–026; ER10–2882–027; ER10–2883–026; ER10–2884–026; ER10–2885–026; ER10–2886–027; ER13–1101–022; ER13–1541–021; ER14–661–013; ER14–787–015; ER15–54–007; ER15–55–007; ER15–647–004; ER15–1475–008; ER15–2191–003; ER15–2453–003; ER15–2593–007; ER16–452–007; ER16–705–005; ER16–706–005; ER16–1154–005.

Applicants: Oleander Power Project, L.P., Southern Company—Florida LLC, Southern Power Company, Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, SG2 Imperial Valley LLC, Macho Springs Solar, LLC, Lost Hills Solar, LLC, Blackwell Solar, LLC, Kay Wind, LLC, North Star Solar, LLC, Grant Wind, LLC, Passadumkeag Windpark, LLC, Desert Stateline LLC, RE Tranquillity LLC, RE Garland A LLC, RE Garland LLC, Parrey, LLC.

Description: Errata to August 1, 2016 Notification of Non-Material of Change in Status of Oleander Power Project, Limited Partnership, *et al.*

Filed Date: 8/31/16.

Accession Number: 20160831–5404.

Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER11–4028–008.

Applicants: Portsmouth Genco, LLC.

Description: Notice of Non-Material Change in Status of Portsmouth Genco, LLC.

Filed Date: 8/31/16.

Accession Number: 20160831–5398.

Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–1255–001.

Applicants: Antelope Big Sky Ranch LLC.

Description: Compliance filing: Antelope Big Sky Ranch LLC MBR Tariff to be effective 5/21/2016.

Filed Date: 8/31/16.

Accession Number: 20160831–5158.

Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2522–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 3243 City of Piggott, AR Municipal Light, Water and Sewer NITSA NOA to be effective 8/1/2016.

Filed Date: 8/31/16.

Accession Number: 20160831–5360.

Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2523–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 3244 City of Malden ? Board of Public Works NITSA NOA to be effective 8/1/2016.

Filed Date: 8/31/16.

Accession Number: 20160831–5361.

Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2524–000.

Applicants: Entergy Louisiana, LLC.

Description: Section 205(d) Rate Filing: EES LBA Agreements to be effective 9/1/2016.

Filed Date: 8/31/16.

Accession Number: 20160831–5363.

Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2525–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of cancellation of Three Service Agreements of PJM Interconnection, L.L.C.

Filed Date: 8/31/16.

Accession Number: 20160831–5375.

Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2526–000.

Applicants: WSPP Inc.

Description: Section 205(d) Rate Filing: Schedule Q PacifiCorp Normal 2016 to be effective 6/9/2016.

Filed Date: 9/1/16.

Accession Number: 20160901–5037.

Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2527–000.

Applicants: Caprock Solar I LLC.

Description: Baseline eTariff Filing: MBR Tariff and Application to be effective 11/1/2016.

Filed Date: 9/1/16.

Accession Number: 20160901–5049.

Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2528–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2016–09–01_SA 6507_ Termination of White Pine 1 SSR Agreement to be effective 11/26/2016.

Filed Date: 9/1/16.

Accession Number: 20160901–5057.

Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2529–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Section 205(d) Rate Filing: Revisions to Net Commitment Period Compensation Calculation for Dual Fuel Audits to be effective 11/1/2016.

Filed Date: 9/1/16.

Accession Number: 20160901–5087.

Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2530–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 2028R9 Sunflower Electric Power Corporation NITSA NOA Notice of Cancellation to be effective 6/1/2016.

Filed Date: 9/1/16.

Accession Number: 20160901–5107.

Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2531–000.

Applicants: NYSEG Solutions, LLC.

Description: Tariff Cancellation: Cancellation to be effective 9/30/2016.

Filed Date: 9/1/16.

Accession Number: 20160901–5146.

Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2532–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2016–09–01_Filing to Amend RPU Attachment O and Protocols to be effective 11/1/2016.

Filed Date: 9/1/16.

Accession Number: 20160901–5156.

Comments Due: 5 p.m. ET 9/22/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21679 Filed 9–8–16; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF16–7–000]

Southeastern Power Administration; Notice of Filing

Take notice that on August 29, 2016, Southeastern Power Administration submitted a tariff filing per: Jim Woodruff System Rate Adjustment to be effective 10/1/2016.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the

Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.or* call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on September 28, 2016.

Dated: September 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21682 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2234–001.
Applicants: EF Kenilworth LLC.
Description: Tariff Amendment: Supplement to Market-Based Rate Application to be effective 7/20/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5183.
Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: ER16–2533–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Revisions to the Parameter Limited Schedule Exception Process to be effective 10/31/2016.
Filed Date: 9/1/16.
Accession Number: 20160901–5184.
Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2534–000.
Applicants: Midcontinent Independent System Operator, Inc., Northern Indiana Public Service Company.
Description: Section 205(d) Rate Filing: 2016–09–01_NIPSCO Request for Approval of Depreciation Rates to be effective 10/1/2016.
Filed Date: 9/1/16.
Accession Number: 20160901–5189.
Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2535–000.
Applicants: New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: Sep 2016 Membership Filing to be effective 8/1/2016.
Filed Date: 9/1/16.
Accession Number: 20160901–5218.
Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2536–000.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Cancellation: Termination of PWRPA's Ramal Road and River Road WDT Service Agreements to be effective 11/1/2016.
Filed Date: 9/1/16.
Accession Number: 20160901–5230.
Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2537–000.
Applicants: Tucson Electric Power Company.
Description: Tariff Cancellation: Cancellation of Service Agreement No. 356 to be effective 5/27/2015.
Filed Date: 9/1/16.
Accession Number: 20160901–5234.
Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2538–000.
Applicants: Tucson Electric Power Company.
Description: Tariff Cancellation: Cancellation of Service Agreement Nos. 319, 345, 346, 347, 348 and 357 to be effective 9/1/2016.
Filed Date: 9/1/16.
Accession Number: 20160901–5235.
Comments Due: 5 p.m. ET 9/22/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21680 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14453–001; 14791–000]

Prineville Energy Storage LLC, Ochoco Irrigation District; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 1, 2016, Prineville Energy Storage LLC (Prineville) and Ochoco Irrigation District (Ochoco) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Prineville Reservoir and Arthur Bowman Dam, located on the Crooked River near the City of Prineville in Crook County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Prineville's project would be a pumped storage project that uses the Corps' Prineville Reservoir as the lower reservoir. The project would consist of the following new facilities: (1) A 40-foot-high, 7,700-foot-long concrete-faced rockfill embankment creating a 64-acre upper reservoir; (2) a 15-foot-diameter, 1,400-foot-long low pressure tunnel; (3) two 11-foot-diameter, 1,880-foot-long high pressure conduit; (4) a powerhouse with two 100-megawatt (MW) reversible pump turbines located 365 feet west of the Prineville Reservoir; (5) a tailrace; and (6) a 16-mile-long, 115-kilovolt (kV) transmission line interconnecting with the Ponderosa substation. The Prineville Project would have an average annual generation of 525,600 megawatt-hours (MWh).

Applicants Contact: Mr. Matthew Shapiro, CEO, Prineville Energy Storage, LLC, 1210 W. Franklin Street, Ste. 2, Boise, ID 83702. (208) 246–9925.

Ochoco's Bowman Dam Project would be a conventional project that uses the Corps' existing intake structure at the Bowman Dam and Prineville Reservoir, and the following new facilities: (1) A 10-foot-diameter, 310-foot-long steel pipe inserted into the Corps' existing intake tunnel; (2) a valve chamber; (3) a 9-foot-diameter, 108.44-foot-long steel penstock; (4) a powerhouse with one 3-MW and one 1-MW Francis turbine/

generator units located on the bank next to the Corps' existing spillway; (5) a tailrace; and (6) a 15-mile-long, 24.5 kV transmission line interconnecting to the Central Electric Cooperative facilities. The Bowman Dam Project would have an average annual generation of 17.6 MWh.

Applicant Contact: Mr. Russell Rhoden, Manager, Ochoco Irrigation District, 1001 NW. Deer Street, Prineville, OR 97754. (541) 447–6449.

FERC Contact: Kim Nguyen, *kim.nguyen@ferc.gov,* (202) 502–6105.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 Days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14453–001 and P–14791–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14453–001, or P–14791–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21747 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2520–000]

Grand View PV Solar Two LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Grand View PV Solar Two LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 21, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21684 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4285–046]

The City of Logan, Utah; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's regulations (18 CFR part 380), Commission staff has reviewed the application for non-capacity amendment of license, filed May 8, 2015, to replace or rehabilitate several portions of the Third Dam facilities that are part of the Logan No. 2 Project, which is located on the Logan River, near the City of Logan, in Cache County, Utah.

The project licensee, the City of Logan (City), is proposing to: (1) Replace the spillway crest gates with Obermeyer weirs; (2) replace spillway abutment walls; (3) armor the abutments of the dam, which may consist of a combination of riprap and/or roller compacted concrete; (4) replace the penstock isolation gate (radial gate) with an Obermeyer weir gate; (5) replace the trash rack at the intake structure; (6) replace the low level sluice gatehouse; (7) rehabilitate the upstream face of dam; (8) dredge about 100,000 cubic yards of sediment from the reservoir; (9) refurbish the electrical generating equipment, which includes replacing the existing runners, wicket gates, and associated parts that are damaged; (10) recoat the interior and exterior of the steel portion of the penstock to reduce corrosion potential; and (11) replace the roof and repair the walls of the existing surge tank.

An environmental assessment (EA) has been prepared as part of staff's review of the proposal. In the EA, Commission staff analyzed the probable environmental effects of the planned work and concluded that approval of the work, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–4285) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

All comments on the EA and supplement must be filed by October 3, 2016, and should reference Project No. 4285–046. The Commission strongly encourages electronic filing. Please file comments using the Commission's efiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

For further information, contact Rebecca Martin at (202) 502–6012 or *Rebecca.Martin@ferc.gov.*

Dated: September 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21745 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of the Final Environmental Impact Statement for the Proposed Leach Xpress Project and Rayne Xpress Expansion Project

	Docket No.
Columbia Gas Transmission, LLC.	CP15–514–000
Columbia Gulf Transmission. LLC.	CP15–539–000

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Leach XPress and Rayne XPress Expansion Projects (Projects), proposed by Columbia Gas Transmission, LLC (Columbia Gas) and Columbia Gulf Transmission, LLC (Columbia Gulf), respectively, in the above-referenced dockets. Columbia Gas requests authorization to construct, operate, abandon in-place, replace, and operate certain natural gas pipeline facilities in West Virginia, Pennsylvania, and Ohio to transport about 1.5 million dekatherms of natural gas per day of firm transportation service to natural gas consumers served by the Columbia Gas pipeline systems. Columbia Gulf requests authorization to add new compression in Kentucky to provide about 621,000 dekatherms per day of firm transportation on Columbia Gulf's system.

The final EIS assesses the potential environmental effects of the construction and operation of the Projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the Projects would have some adverse and significant environmental impacts; however, these impacts would be reduced to less than significant levels with the implementation of Columbia Gas' and Columbia Gulf's proposed mitigation and the additional measures recommended by staff in the final EIS.

The Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Kentucky Department for Environmental Protection, Ohio Environmental Protection Agency, Pennsylvania Department of Conservation and Natural Resources, Pennsylvania Department of Environmental Protection, West Virginia Department of Environmental Protection, and West Virginia Department of Natural Resources participated as cooperating agencies in the preparation of the final EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposals and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the final EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the Projects.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities:

- 132 miles of new 36-inch-diameter natural gas pipeline, 24 miles of 36-inch-diameter looping pipeline,[1] 28 miles of 20-inch-diameter pipeline to be abandoned in place, 3 new compressor stations, and appurtenant facilities including 2 existing compressor station modifications, 4 new and 1 modified regulator stations, 13 pig launcher and receiver facilities,[2] 9 mainline valves and 5 odorization facilities proposed by Columbia Gas; and
- two new compressor stations, and a modification to an existing measurement and regulation station proposed by Columbia Gulf.

The FERC staff mailed copies of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. Paper copy versions of this final EIS were mailed to those specifically requesting them; all others received a CD version. In addition, the final EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP15–514 or CP15–539). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

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[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

Dated: September 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21681 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2527–000]

Caprock Solar I LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Caprock Solar I LLC‘s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 21, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21685 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–176–000.
Applicants: Mankato Energy Center, LLC, Southern Power Company.
Description: Joint Application of Mankato Energy Center, LLC, et al. for Authorization Under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities and Requests for Waivers, Expedited Action, and Confidential Treatment.
Filed Date: 9/1/16.
Accession Number: 20160901–5242.
Comments Due: 5 p.m. ET 9/22/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2539–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Revisions to OATT Schedule 12—Appdx A re: RTEP Approved by the Board in Aug 2016 to be effective 11/30/2016.
Filed Date: 9/1/16.
Accession Number: 20160901–5239.
Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2540–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of Service Agreement No. 1571, Queue No. M23 of PJM Interconnection, L.L.C.
Filed Date: 9/1/16.
Accession Number: 20160901–5241.
Comments Due: 5 p.m. ET 9/22/16.

Docket Numbers: ER16–2541–000.
Applicants: Pioneer Wind Park I, LLC.
Description: Baseline eTariff Filing: Pioneer Wind Park I, LLC MBR Tariff to be effective 9/3/2016.
Filed Date: 9/2/16.
Accession Number: 20160902–5076.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2542–000.
Applicants: Public Service Company of New Mexico.
Description: Compliance filing: Order Nos. 827 and 828 Single Combined Compliance Filing to be effective 9/21/2016.
Filed Date: 9/2/16.
Accession Number: 20160902–5111.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2543–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–09–02_SA 2946 MidAmerican-MidAmerican E&P (J498) to be effective 9/2/2016.
Filed Date: 9/2/16.
Accession Number: 20160902–5147.
Comments Due: 5 p.m. ET 9/23/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21683 Filed 9–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Washoe Project—Rate Order No. WAPA–176

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of non-firm power formula rate.

SUMMARY: The Western Area Power Administration (WAPA) proposes to

extend the existing Washoe Project, Stampede Division, non-firm power formula rate through September 30, 2022. The existing Rate Schedule SNF–7 expires September 30, 2017.

DATES: A consultation and comment period starts with the publication of this notice and will end on October 11, 2016. WAPA will accept written comments any time during the consultation and comment period.

ADDRESSES: Send written comments to: Ms. Regina Rieger, Rates Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710; or email comments to *SNR-Rates@wapa.gov.* All documents WAPA uses to develop the proposed Washoe non-firm power formula rate extension will be available for inspection and copying at the Sierra Nevada Region, located at 114 Parkshore Drive, Folsom, CA 95630–4710. WAPA also will post comments received to its Web site, *https://www.wapa.gov/regions/SN/rates/Pages/rates.aspx.*

FOR FURTHER INFORMATION CONTACT: Ms. Regina Rieger, Rates Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4629, email: *SNR-Rates@wapa.gov.*

SUPPLEMENTARY INFORMATION: The existing formula rate provides sufficient revenue to recover annual expenses, interest, and capital requirements, within the cost recovery criteria set forth in DOE Order RA 6120.2; therefore, WAPA proposes to extend the current formula rate schedule for five years.

By Delegation Order No. 00–037.00A, effective October 25, 2013, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

FERC confirmed and approved the Washoe Project non-firm power formula rate, Rate Schedule SNF–7, on April 16, 2009,[1] and the subsequent extension on September 5, 2013.[2] In accordance with 10 CFR part 903.23(a), WAPA proposes to extend the existing formula rate for the period October 1, 2017, through September 30, 2022.

By way of background, Congress declared all Washoe Project costs non-reimbursable except the Stampede Powerplant.[3] The average Stampede generation, approximately 10 gigawatt hours annually, is used principally to provide energy for two Federal fish hatcheries. Since the Washoe Project has no Federally-owned transmission lines, WAPA contracted with Truckee Donner Public Utility District and the City of Fallon (TDPUD/Fallon) to accept Stampede generation and serve project use loads. Energy in excess of project use loads is integrated with the Central Valley Project (CVP) and marketed under the 2004 Power Marketing Plan. Pursuant to Rate Schedule SNF–7, each year, any remaining reimbursable expenses, in excess of the revenue collected under the TDPUD/Fallon contract, are transferred to the CVP and incorporated into the CVP power revenue requirement.

In accordance with 10 CFR part 903.23(a)(2), WAPA determined it is not necessary to hold a public information or public comment forum, but is providing a 30-day comment period. Comments must be received by the end of the comment period. WAPA will post comments received to its Web site, *https://www.wapa.gov/regions/SN/rates/Pages/rates.aspx.* After considering public comments, WAPA will take further action on the proposed formula rate extension consistent with 10 CFR part 903.23(a).

Dated: September 1, 2016.

Mark A. Gabriel,

Administrator.

[FR Doc. 2016–21740 Filed 9–8–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9028–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 08/29/2016 Through 09/02/2016

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160201, Final Supplement, NRC, IL, Generic—License Renewal on Nuclear Plants, Supplement 57, Regarding LaSalle County Station, Units 1 and 2, *Review Period Ends:* 10/11/2016, *Contact:* William Ford 301–415–1263.

EIS No. 20160202, Final, NPS, WY, Moose-Wilson Corridor Final Comprehensive Management Plan, *Review Period Ends:* 10/11/2016, *Contact:* Daniel Noon 307–739–3465.

EIS No. 20160203, Final, FERC, OH, Leach XPress and Rayne XPress Expansion Projects, *Review Period Ends:* 10/11/2016, *Contact:* Juan Polit 202–502–8652.

EIS No. 20160204, Final, USFS, BLM, ID, Rasmussen Valley Mine, *Review Period Ends:* 10/11/2016, *Contact:* Bill Volk 208–236–7503.

The U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's Bureau of Land Management are joint lead agencies for the above project.

EIS No. 20160205, Draft Supplement, USACE, WV, Bluestone Dam Safety Modification, *Comment Period Ends:* 10/24/2016, *Contact:* Rebecca Rutherford 304–304–5924.

Dated: September 6, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–21769 Filed 9–8–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 13, 2016 at 10:00 a.m.

PLACE: 999 E. Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceeding, or arbitration.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Commission Secretary and Clerk.

[FR Doc. 2016–21791 Filed 9–7–16; 11:15 am]

BILLING CODE 6715–01–P

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[1] *See U.S. Dept. of Energy, Western Area Power Admin.*, 127 FERC ¶ 62,043 (2009).

[2] *See U.S. Dept. of Energy, Western Area Power Admin.*, 144 FERC ¶ 62,213 (2013).

[3] *See* Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act, Public Law 101–618, 104 Stat. 3289, 3307 (1990).

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for the information collection requirements contained in the Contact Lens Rule. That clearance expires on September 30, 2016.

DATES: Comments must be received by October 11, 2016.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write "Contact Lens Rule: FTC File No. P054510" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/contactlensrulepra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Alysa S. Bernstein, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mail Drop CC–10528, Washington, DC 20580, at (202) 326–3289.

SUPPLEMENTARY INFORMATION:

Title: Contact Lens Rule (Rule), 16 CFR part 315.

OMB Control Number: 3084–0127.

Type of Review: Extension of a currently approved collection.

Abstract: The FTC promulgated the Rule pursuant to the Fairness to Contact Lens Consumers Act (FCLCA), Public Law 108–164 (Dec. 6, 2003), which was enacted to enable consumers to purchase contact lenses from the seller of their choice. The Rule became effective on August 2, 2004. As mandated by the FCLCA, the Rule requires the release and verification of contact lens prescriptions and contains recordkeeping requirements applying to both prescribers and sellers of contact lenses.

Specifically, the Rule requires that prescribers provide a copy of the prescription to the consumer upon completion of a contact lens fitting and verify or provide prescriptions to authorized third parties. The Rule also mandates that a contact lens seller may sell contact lenses only in accordance with a prescription that the seller either: (a) Has received from the patient or prescriber; or (b) has verified through direct communication with the prescriber. In addition, the Rule imposes recordkeeping requirements on contact lens prescribers and sellers. For example, the Rule requires prescribers to document in their patients' records the medical reasons for setting a contact lens prescription expiration date of less than one year. The Rule requires contact lens sellers to maintain for three years records of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, that they receive directly from customers or prescribers.

The information retained under the Rule's recordkeeping requirements is used by the Commission to determine compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions for Rule violations.

On May 20, 2016, the Commission sought comment on the Rule's information collection requirements.[1] The Commission received comments from the American Optometric Association ("AOA") and 1–800 CONTACTS, Inc., a seller of contact lenses. The AOA states in its comment that the FTC should (1) increase the estimate of time required for a prescriber to respond to a verification request from 3 minutes to 5 minutes, (2) include in its estimate the time prescribers spend addressing issues that may arise as a result of the Rule, and (3) include wages for ophthalmologists in the estimate for labor cost. The AOA also states that the FTC's description of the time required to provide a copy of the prescription to the patient mischaracterizes the assessment, fitting, and prescription process.

1–800 CONTACTS states in its comment its belief that the current information costs of the Rule are reasonable and justified. However, it states that the FTC has overestimated the number of hours that prescribers spend releasing prescriptions because certain states require that prescriptions be valid for two years and because some prescribers are not releasing prescriptions. The company also opined that increased compliance would lessen the Rule's burden, requested increased enforcement, and suggested a change to the Rule to improve compliance.

Data provided and requested by the AOA is reflected in updated burden estimates set out below and both the AOA's and 1–800 CONTACTS' comments are addressed in more detail within the Agency's "Supporting Statement for Information Collection Provisions of the Contact Lens Rule," which is available upon request from the FTC contact officials and separately at *www.reginfo.gov.*

As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Contact lens prescribers and contact lens sellers.

Estimated Annual Hours Burden: 1,903,315 hours (derived from 949,710 hours + 953,605 hours).

- *Contact Lens Prescribers:* 683,333 hours (41 million contact lens wearers × 1 minute per prescription/60 minutes) + 266,377 hours (3,196,524 verification requests × 5 minutes/60 minutes) = 949,710 hours.
- *Contact Lens Sellers:* 887,923 hours (10,655,080 orders × 5 minutes/60 minutes) + 65,682 burden hours (3,940,920 orders × 1 minute/60 minutes) = 953,605 hours.

Estimated Annual Cost Burden: $73,082,912, which is derived from $58,464,147.60 for prescriber hours (($55.65 × 807,253.5 optometrist hours) + ($95.05 × 142,456.5 ophthalmologist hours)) + $14,618,764.65 for sellers ($15.33 × 953,605 office clerk hours).[2]

Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 11, 2016. Write "Contact Lens Rule: FTC File No. P054510" on your comment. Your comment—including your name and your state—

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[1] See 81 FR 31938.

[2] According to the Bureau of Labor Statistics from May 2015, salaried optometrists earn an average wage of $55.65 per hour, other physicians and surgeons earn an average wage of $95.05 per hour, and general office clerks earn an average wage of $15.33 per hour. *See* Press Release, Bureau of Labor Statistics, United States Department of Labor, Occupational Employment Statistics—May 2015, available at *http://www.bls.gov/news.release/ocwage.t01.htm.*

will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you are required to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/contactlensrulepra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write "Contact Lens Rule: FTC File No. P054510" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 11, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

Christian S. White,

Acting General Counsel.

[FR Doc. 2016–21675 Filed 9–8–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034; Docket 2016–0053; Sequence 39]

Information Collection; Examination of Records by Comptroller General and Contract Audit

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the examination of records by comptroller general and contract audit.

DATES: Submit comments on or before November 8, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0034 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for OMB Control No. 9000–0034. Select the link "Comment Now" that corresponds with "Information Collection 9000–0034, Examination of Records by Comptroller General and Contract Audit." Follow the instructions provided on the screen. Please include your name, company name (if any), and "Information Collection 9000–0034, Examination of Records by Comptroller General and Contract Audit" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0034, Examination of Records by Comptroller General and Contract Audit.

Instructions: Please submit comments only and cite Information Collection 9000–0034, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Contract Policy Branch, GSA, 202–208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of this information collection, for the examination of records by Comptroller General and contract audit, is to require contractors to maintain certain records and to ensure the Comptroller General and/or agency have access to, and the right to, examine and audit records, which includes: Books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, for a period of three years after final payment. This information is necessary for examination and audit of contract surveillance, verification of contract pricing, and to provide reimbursement of contractor costs, where applicable. The records retention period is required by the statutory authorities at 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306, and are implemented through the following clauses: Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5; and Audit and Records-Sealed Bidding clause, 52.214–26. This information collection does not require contractors to create or maintain any records that the contractor does not normally maintain in its usual course of business.

B. Annual Reporting Burden

Respondents: 14,830.

Responses per Respondent: 10.

Total number of responses: 148,300.

Hours per Response: 1.0.

Total Burden Hours: 148,300.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0034, Examination of Records by Comptroller General and Contract Audit, in all correspondence.

Dated: September 6, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–21721 Filed 9–8–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10328]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 11, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Self-Referral Disclosure Protocol; *Use:* The Affordable Care Act ("ACA") was enacted on March 23, 2010. Section 6409 of the ACA requires the Secretary of the Department of Health and Human Services (the "Secretary"), in cooperation with the Office of Inspector General of the Department of Health and Human Services, to establish a Medicare self-referral disclosure protocol ("SRDP"). The SRDP enables providers of services and suppliers to self-disclose actual or potential violations of the physician self-referral statute, section 1877 of the Social Security Act (the "Act"). Section 6409(b) of the ACA gives the Secretary the authority to reduce the amount due and owing for all violations of section 1877 of the Act. In establishing the amount by which an overpayment may be reduced, the Secretary may consider: the nature and extent of the improper or illegal practice; the timeliness of the self-disclosure; the cooperation in providing additional information related to the disclosure; and such other factors as the Secretary considers appropriate.

In accordance with the ACA, CMS established the SRDP on September 23, 2010, and information concerning how to disclose an actual or potential violation of section 1877 of the Act was posted on the CMS Web site. The most recent approval of this information collection request ("ICR") was issued by the Office of Management and Budget on August 26, 2014.

We are now seeking approval to revise the currently approved ICR. Under the currently approved collection, a party must provide a financial analysis of overpayments arising from actual or potential violations of section 1877 of the Act based on a 4-year lookback period. On February 12, 2016, CMS published a final rule on the reporting and returning of overpayments. See CMS- 6037–F, Medicare Program; Reporting and Returning of Overpayments, 81 FR 7654 (Feb. 12, 2016) (the "final overpayment rule"). The final overpayment rule establishes a 6-year lookback period for reporting and returning overpayments. We are revising the information collection for the SRDP to reflect the 6-year lookback period established by the final overpayment rule. The revision is necessary to ensure that parties submitting self-disclosures to the SRDP report overpayments for the entire 6-year lookback period. The 6-year lookback period applies *only* to submissions to the SRDP received *on or after* March 14, 2016, the effective date of the final overpayment rule; parties submitting self-disclosures to the SRDP prior to March 14, 2016 need only provide a financial analysis of potential overpayments based on a 4-year lookback period.

We are also taking the opportunity to streamline and simplify the SRDP by issuing a required form for SRDP submissions. The SRDP Form will reduce the burden on disclosing parties by reducing the amount of information that is required for submissions to the SRDP and providing a streamlined and standardized format for the presentation of the required information. *Form Number:* CMS–10328 (OMB control number: 0938–1106); *Frequency:* Annually and semi-annually; *Affected Public:* Private sector (Business or other for-profits and Not-for-profits); *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 5,000. (For policy questions regarding this collection contact Matt Edgar at 410–786–0698).

Dated: September 2, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–21625 Filed 9–8–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Blood Products Advisory Committee Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Blood Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on November 17, 2016, from 8 a.m. to 5:30 p.m. and on November 18, 2016, from 8:30 a.m. to 1 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD, 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: LCDR Bryan Emery or Joanne Lipkind, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, Bldg. 71, Rm. 6132, at 240–402–8054, *bryan.emery@fda.hhs.gov* and 240–402–8106, *joanne.lipkind@fda.hhs.gov,* respectively, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting. For those unable to attend in person, the meeting will also be available via Webcast. The Webcast will be available at the following link for both days: *https://collaboration.fda.gov/bpac1116/.*

SUPPLEMENTARY INFORMATION:

Agenda: On the morning of November 17, 2016, the Committee will meet in open session to discuss strategies to manage iron deficiency associated with blood donation. The Committee will also discuss proposed procedures for assuring donor safety for collections of blood from female donors with hemoglobin values of 12.0–12.4g/dL or a hematocrit value between 36 and 38. In the afternoon, the Committee will meet in open session to discuss adverse reactions related to blood donation in teenage (16 to 18 years) donors, and the effectiveness of several mitigation measures. On November 18, 2016, the Committee will meet in open session to hear an informational session on Zika virus and blood safety in the United States. Following the informational session, the Committee will hear presentations on the following topics: (1) The Transfusion Transmissible Infections Monitoring System; (2) a summary of the FDA workshop on new methods to predict the immunogenicity of therapeutic coagulation proteins; and (3) a summary of the FDA workshop on preclinical evaluation of red blood cells for transfusion.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 4, 2016. Oral presentations from the public will be scheduled between approximately 11 a.m. to 11:45 a.m. and 4 p.m. to 4:30 p.m. on November 17, 2016. Oral presentations from the public will also be scheduled between approximately 10:30 a.m. and 11 a.m. and 12:30 p.m. to 1 p.m. on November 18, 2016. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 27, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 28, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Bryan Emery or Joanne Lipkind at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21687 Filed 9–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0600]

Health Document Submission Requirements for Tobacco Products; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a revised draft guidance for industry entitled "Health Document Submission Requirements for Tobacco Products." The revised draft guidance is intended to assist persons making certain document submissions to FDA as required by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this revised draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 11, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2009–D–0600 for "Health Document Submission Requirements for Tobacco Products." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the revised draft guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–2000. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Katherine Collins, Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–2000, 1–877–287–1373, email: *AskCTP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a revised draft guidance for industry entitled "Health Document Submission Requirements for Tobacco Products." We are issuing this draft guidance consistent with our good guidance practices (GGP) regulation (21 CFR 10.115). The draft guidance, when finalized, is intended to assist persons making certain document submissions to FDA as required by the Tobacco Control Act.

The Tobacco Control Act, enacted on June 22, 2009, amends the FD&C Act and provides FDA with the authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public's health (Pub. L. 111–31). Among other things, the Tobacco Control Act adds section 904(a)(4) to the FD&C Act (21 U.S.C. 387d(a)(4)), requiring each tobacco product manufacturer or importer, or agents thereof to submit all documents developed after June 22, 2009, that relate to any "health, toxicological, behavioral, or physiological effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives."

The revised draft guidance includes guidance for manufacturers or importers of products that are newly deemed as tobacco products that are subject to Chapter IX of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). Cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco were immediately subject to the tobacco provisions of the FD&C Act, including section 904(a)(4), and to FDA's regulatory authority. As for other types of tobacco products, section 901(b) of the FD&C Act (21 U.S.C. 387a) grants FDA authority to deem those products subject to the law as well. Pursuant to that authority, FDA issued a rule deeming all other products that meet the statutory definition of "tobacco product", set forth in section 201(rr) of the FD&C Act, except for accessories of those products, as subject to the FD&C Act (81 FR 28974). FDA published the final rule on May 10, 2016 (81 FR 28974), and it became effective on August 8, 2016. Manufacturers and importers of tobacco products that have been deemed subject to the FD&C Act are now required to comply with Chapter IX of the FD&C Act, including section 904(a)(4).

II. Significance of Guidance

FDA is issuing this revised draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, represents the current thinking of FDA on health document submission requirements. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This revised draft guidance also refers to previously approved collections of information found in FDA statute. The revised draft guidance includes information and recommendations for how to provide health document submissions. The collections of information in section 904(a)(4) of the FD&C Act have been approved under OMB control number 0910–0654.

IV. Electronic Access

Persons with access to the Internet may obtain an electronic version of the draft guidance at either *http://www.regulations.gov* or *http://www.fda.gov/TobaccoProducts/Labeling/RulesRegulationsGuidance/default.htm.*

Dated: August 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21686 Filed 9–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2567]

E17 General Principles for Planning and Design of Multi-Regional Clinical Trials; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled "E17 General Principles for Planning and Design of Multi-Regional Clinical Trials." The draft guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The draft guidance describes general principles for planning and designing multi-regional clinical trials (MRCT). MRCTs conducted according to the guidance will investigate treatment effects in overall populations with multiple ethnic factors (intrinsic and extrinsic factors as described in the ICH guidance entitled "E5 Ethnic Factors in the Acceptability of Foreign Clinical Data" (E5 guidance)) and evaluate the consistency of treatment effects across populations. The draft guidance is intended to increase the acceptability of data from MRCTs as the primary source of evidence supporting marketing approval in global regulatory submissions and to thereby facilitate more efficient drug development and earlier access to medicines.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 8, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a

written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–2567 for "E17 General Principles for Planning and Design of Multi-Regional Clinical Trials; International Council for Harmonisation; Draft Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Aloka Chakravarty, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 3514, Silver Spring, MD 20993–0002, 301–796–1655; or Douglas R. Pratt, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3066, Silver Spring, MD 20993–0002, 301–796–2640.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993–0002, 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; CDER and CBER, FDA; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers.

In June 2016, the ICH Assembly endorsed the draft guidance entitled "E17 General Principles for Planning and Design of Multi-Regional Clinical Trials" and agreed that the guidance should be made available for public comment. The draft guidance is the product of the Efficacy Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Efficacy Expert Working Group.

The draft guidance provides guidance on general principles for planning and designing MRCTs. Drug development has been globalized, and MRCTs for regulatory submission have widely been conducted in ICH regions and beyond. Regulatory agencies are currently facing some challenges in evaluating data from MRCTs for drug approval, and ICH is developing this harmonized international guidance to promote the appropriate conduct of MRCTs and to focus especially on scientific issues in planning and designing MRCTs. This new guidance will complement the E5 guidance on MRCTs and facilitate MRCT data acceptance by multiple regulatory agencies.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "E17 General Principles for Planning and Design of Multi-Regional Clinical Trials." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: September 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21689 Filed 9–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Science Advisory Board to the National Center for Toxicological Research Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on November 1, 2016, from 8 a.m. to 5:30 p.m., and on November 2, 2016, from 8 a.m. to 11:40 a.m.

ADDRESSES: Crowne Plaza Hotel, 201 S. Shackleford Rd., Little Rock, AR 72211. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Donna Mendrick, National Center for Toxicological Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2208, Silver Spring, MD 20993–0002, 301–796–8892 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On November 1, 2016, the SAB Chair will welcome the participants, and the NCTR Director will provide a Center-wide update on scientific initiatives and accomplishments during the past year. The SAB will be presented with an overview of the Division of Bioinformatics and Biostatistics Subcommittee and the Subcommittee Site Visit Report and a response to this review. There will be the public comment session and an update from the NCTR Research Divisions.

On November 2, 2016, the Center for Biologics and Evaluation and Research, Center for Drug Evaluation and Research, Center for Devices and Radiological Health, Office of Food and Veterinary Medicine, Center for Tobacco Products, and the Center for Veterinary Medicine will each briefly discuss their center-specific research strategic needs and potential areas of collaboration.

Following an open discussion of all the information presented, the open session of the meeting will close so the SAB members can discuss personnel issues at NCTR at the end of each day.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On November 1, 2016, from 8 a.m. to 5:30 p.m., and November 2, 2016, from 8 a.m. to 11:40 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 25, 2016. Oral presentations from the public will be scheduled on November 1, 2016, between approximately 1:15 p.m. to 2:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 17, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 18, 2016.

Closed Committee Deliberations: On November 1, 2016, from 5:30 p.m. to 6 p.m., and November 2, 2016, from 11:40 a.m. to 12:15 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Donna Mendrick at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21688 Filed 9–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2241]

Substantiation for Structure/Function Claims Made in Infant Formula Labels and Labeling: Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled "Substantiation for Structure/Function Claims Made in Infant Formula Labels and Labeling." The draft guidance, when finalized, will describe the type and quality of evidence that we recommend that infant formula manufacturers and distributors have to substantiate structure/function claims in infant formula labels and labeling. This draft guidance is intended to help infant formula manufacturers making structure/function claims comply with the statutory requirement that all claims in infant formula labeling must be truthful and not misleading under the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 8, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–2241 for "Substantiation for Structure/Function Claims Made in Infant Formula Labels and Labeling." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition (HFS–800), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

With regard to this draft guidance: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFS–850), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1451.

With regard to the information collection issues: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled "Substantiation for Structure/Function Claims Made in Infant Formula Labels and Labeling." We are issuing this draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent our current thinking on substantiation of structure/function claims in infant formula labels and labeling. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

The draft guidance, when finalized, will describe the type and quality of evidence we recommend that infant formula manufacturers and distributors have in their records to substantiate their structure/function claims in the labeling of infant formulas. It will describe what we believe to be competent and reliable scientific evidence to substantiate structure/function claims in the context of infant formulas.

II. Paperwork Reduction Act of 1995

This draft guidance contains proposed information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the information collected on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Recommended Recordkeeping to Substantiate Structure/Function Claims Made in Infant Formula Labels and Labeling (OMB Control Number 0910—NEW).

Description of respondents: This new collection of information would be performed by infant formula manufacturers and distributors. The records recommended, to the extent practicable, in this draft guidance would include one-time and annual information collection burdens pertaining to substantiation of structure/function claims made by infant formula manufacturers and distributors. In addition, we have estimated the information collection burden for any future structure/function claims that would involve controlled studies to generate data to support those structure/function claims.

The draft guidance document for industry entitled "Substantiation for Structure/Function Claims Made in Infant Formula Labels and Labeling" addresses only structure/function claims in infant formula labeling. It describes the type and quality of evidence we recommend infant formula manufacturers and distributors have to substantiate their structure/function claims in labeling of both nonexempt and exempt infant formulas under section 403(a) of the FD&C Act (21 U.S.C. 343(a)(1)).

Analysis of Burden Estimates Resulting From Substantiation for Infant Formula Structure/Function Claims: Infant formula manufacturers and distributors would only collect information to substantiate their product's structure/function claim if they choose to place a structure/function claim on their product's label or labeling. Gathering evidence on a currently existing claim is estimated to be a one-time burden; the respondents would collect the substantiating information for their product pursuant to section 403(a) of the FD&C Act. We recommend that infant formula manufacturers and distributors accurately maintain the substantiating materials for these claims in their files. We estimate that infant formula manufacturers and distributors would seek substantiation for their claims in intervention studies and the scientific literature and that this burden will likely be comparable to the time needed to assemble information for a new infant formula submission (16 hours). In addition, we estimate, based on information available to FDA, that there are currently 10 existing structure/function claims for which infant formula manufacturers would gather substantiation data. Therefore, the total one-time estimated burden imposed by this collection of information would be 160 hours (16 estimated information collection hours × 10 estimated existing structure/function claims), as shown in table 1.

We have estimated the annual information collection burdens for maintenance of records related to substantiation of existing structure/function claims. We estimate that respondents would spend 1 hour annually maintaining records for each of the 10 estimated currently existing structure/function claims. Therefore, 1 hour × 10 claims = 10 annual hours, as presented in table 1.

It is possible that an infant formula manufacturer or distributor would want to make a structure/function claim for which there is equivocal or insufficient evidence or no substantiating evidence. In this case, we estimate that an infant formula manufacturer or distributor would conduct a controlled study in order to gather data to substantiate the structure/function claim. It is not possible to know the frequency with which this may occur; however, we assume that an infant formula manufacturer or distributor would engage in a controlled study only if the benefits to the infant formula manufacturer or distributor were larger than the costs of performing the study. To account for the possibility that infant formula manufacturers or distributors would choose to conduct a controlled study for the purpose of generating data to substantiate a new structure/function claim, in table 2 we estimate an information collection burden based on one hypothetical annual controlled study. The burdens of this hypothetical controlled study are based on averages taken from three sample controlled studies (Refs. 1, 2, and 3) and estimates an average test subject size of 153 infants.

We estimate that a hypothetical controlled study would involve, on average, four recordkeepers: A principal investigator (*e.g.*, a physician), a sample collector, one nurse or other health care professional with similar experience, and a microbiological laboratory technologist. We estimate that the principal investigator would work, on average, 3 hours annually to assemble and interpret the data collected per study period. We estimate that one sample collector would work an average of 38.25 hours annually (153 infants × 0.25 hours per infant = 38.25 hours) to collect and record stool samples from infants. We estimate that one nurse or other health care professional with similar experience would work an average of 38.25 hours annually (153 infants × 0.25 hours per infant = 38.25 hours) to complete questionnaires on the samples collected from the infants in the study. We estimate that a microbiological laboratory technologist would work an average of 76.5 hours annually (153 infants × 0.5 hours per infant = 76.5 hours) to prepare and analyze fecal samples taken from infants in the controlled study. All estimates are shown in table 2. Therefore, a total of 156 additional annual burden hours (3 + 38.25 + 38.25 + 76.5 = 156) are estimated to account for the information collection burden resulting from the need to conduct a controlled study in order to gather data to substantiate a new structure/function claim, or a structure/function claim that lacks sufficient prior evidence, for a total of 166 total annual hours (156 + 10 = 166) for the upkeep and generation of information used to substantiate structure/function claims. Including the one-time burden of 160 hours annualized over 3 years (160/3 = 53.3), the total annual record keeping burden is 219.3 hours (166 + 53.3 = 219.3). There are no estimated capital costs or operating and maintenance costs associated with this information collection.

TABLE 1—ESTIMATED ONE-TIME HOURLY RECORDKEEPING BURDEN

Recordkeeping activity	Number of respondents	First year frequency of recordkeeping	Total records	Hours per record	Total hours
First Year Hourly Burden					
Assembling Records Related to Substantiation of Existing Structure/Function Claims	10	1	10	16	160
Total First Year Only Recordkeeping Burden					*160

TABLE 2—RECORDKEEPING BURDEN

Recordkeeping activity	Number of respondents	Annual frequency of recordkeeping	Total records	Hours per record	Total hours
Recurring Hourly Burden					
*Annualized Recordkeeping Burden from Table 1	10	1	5.3	1	53.3
Maintaining Records Related to Substantiation of Structure/Function Claims.	10	1	10	1	10
Controlled Study—Principal Investigator	1	1	1	3	3
Controlled Study—Sample Collector	1	153	153	0.25 (15 minutes)	38.25
Controlled Study—Nurse/Heath Care Professional.	1	153	153	0.25 (15 minutes)	38.25
Controlled Study—Lab Tech	1	153	153	0.5 (30 minutes)	76.5
Total Recordkeeping Burden					219.3

Before the proposed information collection provisions contained in this draft guidance become effective, we will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the proposed information collection provisions. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.*

1. Moro, G., F. Mosca, V. Miniello, *et al.*, "Effects of a New Mixture of Prebiotics on Faecal Flora and Stools in Term Infants." *Acta Paediatrica,* 2003. Supplement September 1991(441): pp. 77–79.
2. Boehm, G., M. Lidestri, P. Casetta,, *et al.*, "Supplementation of a Bovine Milk Formula with an Oligosaccharide Mixture Increases Counts of Faecal Bifidobacteria in Preterm Infants." *Archives of Disease in Childhood Fetal and Neonatal Edition,* 2002. 86(3): pp. F178–181.
3. Pickering, L.K., D.M. Granoff, J.R. Erickson, *et al.*, "Modulation of the Immune System by Human Milk and Infant Formula Containing Nucleotides." *Pediatrics,* 1998. 101(2): pp. 242–249.

Dated: August 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21725 Filed 9–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Maternal, Infant, and Early Childhood Home Visiting Program Cost Reporting Pilot Study

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from

the public during the review and approval period.

DATES: Comments on this ICR should be received no later than October 11, 2016.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Maternal, Infant, and Early Childhood Home Visiting Program Cost Reporting Pilot Study

OMB No. 0906–xxxx—NEW

Abstract: The Maternal, Infant, and Early Childhood Home Visiting Program (Federal Home Visiting Program), administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. States, Tribal entities, and certain nonprofit organizations are eligible to receive funding from the Federal Home Visiting Program and have the flexibility to tailor the program to serve the specific needs of their communities. Funding recipients may subaward grant funds to organizations, otherwise known as Local Implementing Agencies (LIAs), in order to provide services to eligible families in at-risk communities.

Need and Proposed Use of the Information: This information collection is requested to conduct a pilot study to test the reliability of a standardized cost reporting tool for the provision of evidence-based home visiting services. The information collected will be used to: Test the reliability and feasibility of implementing a proposed set of standardized cost metrics and organizational characteristics across various contexts; estimate preliminary total costs for implementing evidence-based home visiting services, including ranges, and; further refine cost metrics and the cost reporting tool based on feedback received through the pilot study. Proposed standard cost metrics have been developed based on a review of the existing literature for measures of home visiting costs, as well as from ongoing discussions with developers of evidence-based home visiting models.

HRSA received comments from one respondent during the public comment period which estimated the hourly burden per response to be 16 hours. The estimated burden has been revised to reflect this feedback. Further, the commenter expressed an interest in using the tool to analyze the cost-benefit and overall value of home visiting programs. While the cost reporting tool may be useful in collecting information that will lead to additional cost-benefit analyses, those analyses are outside the scope of the current project. A full response to the comments can be accessed in Part A of the Supporting Statement.

Likely Respondents: Organizations, including LIAs providing evidence-based home visiting services through the Federal Home Visiting Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Cost Elements Table	90	1	90	15.5	1,395
Organizational Characteristics Table	90	1	90	0.5	45
Total	[1] 90		90		1,440

[1] The same 90 individuals complete the Cost Elements Table and the Organizational Characteristics Table.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–21734 Filed 9–8–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Small Rural Hospital Transitions Project

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than October 11, 2016.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance

Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Small Rural Hospital Transitions Project OMB No. 0906–xxxx—NEW

Abstract: Under Section 330A of the Public Health Service Act (42 U.S.C. 254c(e)), the Federal Office of Rural Health Policy (FORHP) funds grant programs supporting expanding access to, and improving the quality of essential health care services in rural and frontier communities. Small rural hospitals are facing many challenges in the new health care environment, including the concurrent need to better measure and account for quality of care in all settings; improving transitions of care as patients move from one care setting to another; adopting new payment approaches such as value-based purchasing; and tailoring operations to the new approaches to care delivery, such as accountable care organizations (ACO) and patient-centered medical homes. Success in this new environment will require bridging the gaps between the current system and the newly emerging system of healthcare delivery and payment. Because little is known about how these new models might impact rural communities, there is a need to help hospitals understand and consider those factors that would make them logical participants in health care systems that focus on value. The Small Rural Hospital Transitions (SRHT) Project will assist small rural hospitals in making the transition. The purpose of the project is to provide on-site technical assistance to nine small rural hospitals located in persistent poverty counties. Technical assistance will be provided in the areas of: (1) Financial assessments, (2) creating a quality-focused environment, (3) aligning services to community need, and, (4) to the extent that financial and quality core areas have been stabilized, assistance to help the hospitals consider factors that would make them logical participants in health care systems that focus on value (for example ACOs, shared savings programs, primary care medical homes).

Need and Proposed Use of the Information: The information will be solicited in the form of the SRHT Project Technical Assistance Online Application form and the supporting hospital assessment, Performance Excellence for Rural Hospitals. All small rural hospitals desiring to apply for onsite technical assistance through SRHT will be required to complete the application and the survey. The applicant's information will be scored and ranked to aid in the selection of nine small rural hospitals to receive on-site technical assistance. Both the application form and the hospital assessment are designed to ensure the selection of hospital applicants consistent with established eligibility criteria and hospitals readiness or ability to implement consultant's recommendations.

A 60-day **Federal Register** Notice was published in the **Federal Register** on June 24, 2016 (81 FR 41315). There were no public comments.

Likely Respondents: Small rural hospitals located in a rural community, as defined by FORHP, persistent poverty county, or a rural census tract of a metro persistent poverty county; have 49 staffed beds or less as reported on the hospital's most recently filed Medicare Cost Report. Hospitals; and for-profit or not-for-profit.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
SRHT Project Technical Assistance Online Application	30	38	1140	.50	570
Assessment: Performance Excellence for Rural Hospitals	30	29	870	.25	217.5
Total	*30	....	2010	....	787.5

*The same individuals complete the SRHT Online Application and the Assessment for a total of 30 respondents.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–21733 Filed 9–8–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Nominations to the National Toxicology Program for the Report on Carcinogens and Office of Health Assessment and Translation; Request for Information

SUMMARY: The National Toxicology Program (NTP) requests information on four nominations. Four substances are being considered for possible review for future editions of the Report on Carcinogens (RoC). Three of these four substances are also being considered for evaluation of non-cancer health outcomes by the Office of Health Assessment and Translation (OHAT).

DATES: Receipt of information: Deadline is October 11, 2016.

ADDRESSES: Information on substances for possible review should be submitted electronically at *http://ntp.niehs.nih.gov/go/778417.*

FOR FURTHER INFORMATION CONTACT:

RoC Nominations: Dr. Ruth Lunn, Director, Office of RoC; telephone (919) 316–4637; *lunn@niehs.nih.gov. OHAT Nominations:* Dr. Windy Boyd, OHAT, telephone (919) 541–9810; *boydw@niehs.nih.gov.* Address for Dr. Lunn and Dr. Boyd: Division of NTP, National

Institute of Environmental Health Sciences, 111 T.W. Alexander Drive, P.O. Box 12233, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Request for Information: NTP requests information on four substances that have been nominated for possible review for future editions of the RoC (see *http://ntp.niehs.nih.gov/go/rocnom*); three of these four substances are also under consideration for evaluation of non-cancer health outcomes (see *http://ntp.niehs.nih.gov/go/763346*). The four nominations are:

- *Consumption of red meat:* cancer and non-cancer health hazard evaluations.
- *Consumption of processed meat:* cancer and non-cancer health hazard evaluations.
- *Consumption of meat cooked at high temperatures:* cancer and non-cancer health hazard evaluations.
- *Antimony trioxide:* cancer hazard evaluation.

Cancer hazard evaluation of a substance for the RoC may seek to list a new substance in the report, reclassify the listing status of a substance already listed, or remove a listed substance.

Specifically, NTP requests information on: (1) Current production, use patterns, and human exposure estimates for antimony trioxide; (2) data on dietary intake estimates of red meat, processed meat, or meat cooked at high temperatures; and for all four nominations (3) recently published, ongoing, or planned studies related to evaluating adverse health outcomes (*e.g.,* cancer, development, reproductive, or immunological disorders); (4) scientific issues important for prioritizing and assessing adverse health outcomes; and (5) names of scientists with expertise or knowledge on any of these substances—please indicate the substance and include any bibliographic citations when available. NTP will use this information in determining which substances to propose for formal health hazard evaluations.

Information on substances for possible review should be submitted electronically at *http://ntp.niehs.nih.gov/go/778417* or emailed to Dr. Lunn or Dr. Boyd (see **FOR FURTHER INFORMATION CONTACT**). Contact information for comments should include the submitter's name, affiliation, sponsoring organization (if any), telephone, and email. Written information received in response to this notice will be posted on the NTP Web site, and the submitter identified by name, affiliation, and/or sponsoring organization. Guidelines for public comments are at *http://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

Responses to this request for information are voluntary. This request for information is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to it. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use. No proprietary, classified, confidential, or sensitive information should be included in your response.

Background Information on ORoC: On behalf of NTP, ORoC prepares the RoC following an established, four-part process (*http://ntp.niehs.nih.gov/go/rocprocess*). The RoC is a congressionally mandated, science-based, public health report that identifies agents, substances, mixtures, or exposures (collectively called "substances") in our environment that pose a cancer hazard for people in the United States. Published biennially, each edition of the RoC is cumulative and consists of substances newly reviewed in addition to those listed in previous editions. Newly reviewed substances with their recommended listing are reviewed and approved by the Secretary of Health and Human Services. The 13th RoC, the latest edition, was published on October 2, 2014 (available at *http://ntp.niehs.nih.gov/go/roc13*). The 14th RoC is under development.

Background Information on OHAT: On behalf of NTP, OHAT conducts literature-based evaluations to assess the evidence whether environmental chemicals, physical substances, or mixtures (collectively called "substances") cause adverse non-cancer health outcomes. As part of these evaluations, NTP may also provide opinions on whether these substances might be of concern for causing adverse effects on human health given what is known about toxicity and current human exposure levels. Information about OHAT can be found at *http://ntp.niehs.nih.gov/go/ohat.*

Dated: September 6, 2016.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2016–21698 Filed 9–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive, Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: Technology description follows.

Reagent for Mapping Genome-Wide Enhancer-Promoter Interactions

This invention is a research reagent named the "bivalent Tn5 complex" used in transposition-mediated analysis of chromatin looping (TrAC-looping) to determine genome-wide enhancer-promoter interactions during studies of 4D nucleomes in normal development and disease conditions. Enhancer-promoter interactions are key in temporospatial control of gene expression during normal development and pathological conditions. Currently available methods of analyzing genome-wide enhancer-promoter interactions are insufficient in achieving necessary resolution, give rise to false positive artifacts due to *in vitro* ligation steps, or too expensive due to the necessity of sequencing over a billion reads. The instant reagent and associated TrAC-looping technique effectively reduce false positive detection and achieve a 10 to 100-times higher resolution at lower cost for mapping genome-wide interactions between enhancers and promotes essential for the control of gene expression in normal development and pathological conditions.

References

—Lieberman-Aiden E et al., *Science* 2009 Oct 9;326(5950):289–93.

—Rao S et al., Cell. 2014 Dec 18;159(7):1665–80.
—Goryshin et al., *JBC* 1998 March 273(13) 7367–7374.

Potential Commercial Applications

—Genome wide Enhancer-Promoter mapping
—Functional annotation of genomic structure
—Three-dimensional chromatin organization
—Analysis of 4D Nucleomes during development of diseases
—Identification of key genomic sequences involved in diseases
—Diagnostic for diseases associated with aberrant gene expression

Competitive Advantages

—Transposition mediated analysis of chromatin looping

Development Stage: Research reagent.

Inventors: Keji Zhao and Qingsong Tang (both of NHLBI).

Intellectual Property: HHS Reference No. E–266–2016/0;—Research reagent.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@mail.nih.gov.*

Dated: September 2, 2016.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2016–21699 Filed 9–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Conclusion of the National Customs Automation Program (NCAP) Test Concerning the Submission of Data Required by the Food Safety and Inspection Service (FSIS) in the Automated Commercial Environment (ACE)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces the conclusion of the National Customs Automation Program (NCAP) test concerning the electronic transmission of certain import data required by the Food Safety and Inspection Service (FSIS) to the Automated Commercial Environment (ACE) using the Partner Government Agency (PGA) Message Set. U.S. Customs and Border Protection (CBP) has determined that the NCAP test has been a success, as ACE has proven capable of receiving and processing the data required by FSIS, and sharing that data with FSIS. Accordingly, this NCAP test will be concluded on October 11, 2016. CBP has made ACE the sole CBP-authorized electronic data interchange (EDI) system for most entry and entry summary filings, including entry and entry summary filings for meat, poultry and egg products regulated by FSIS. As a result, filers transmitting electronic import data required by FSIS with their electronic entry or entry summary must use ACE.

DATES: The NCAP test will conclude on October 11, 2016.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted via email to Josephine Baiamonte, ACE Business Office (ABO), Office of Trade, at *josephine.baiamonte@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: For CBP-related questions, contact Jeffrey Nii, Director, Inter-Agency Collaboration Division, Office of Trade, at *jeffrey.c.nii@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the legacy Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing. ACE will streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and its communities of interest. The ability to meet these objectives depends upon successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality, designed to introduce a new capability or to replace a specific legacy ACS function.

On February 29, 2016, CBP published a notice in the **Federal Register** announcing its plan to begin a phased decommissioning of ACS for entry and entry summary filings, making ACE the sole CBP-authorized electronic data interchange (EDI) system for processing those electronic filings. *See* 81 FR 10264 (February 29, 2016). As part of this phased decommissioning, CBP announced that ACE would become the sole CBP-authorized EDI for processing certain electronic entries and entry summaries for merchandise subject to the import requirements of the Food and Drug Administration on June 15, 2016. *See* 81 FR 30320 (May 16, 2016). On July 23, 2016, CBP completed this phased decommissioning, and ACE became the sole CBP-authorized EDI system for most entry and entry summary filings for all filers. *See* 81 FR 32339 (May 23, 2016). Entries and entry summaries for the entry types specified in the May 23, 2016 notice, including entries and entry summaries accompanied by data required by the Food Safety and Inspection Service (FSIS), must be filed in ACE. ACS is no longer available for these filings.

II. The Partner Government Agency Message Set Test for FSIS Data

The Partner Government Agency (PGA) Message Set is the data required to satisfy a PGA's reporting requirements through ACE. It enables the trade community to submit trade-related data required by the PGA only once to CBP, thus improving communications between the agency and filers, and shortening entry processing time. Also, by virtue of being electronic, the PGA Message Set eliminates the necessity for the submission and subsequent manual processing of paper documents.

Through the Customs Modernization Act and section 101.9 of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), the Commissioner of CBP has authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. *See* Treasury Decision (T.D.) 95–21.

On December 13, 2013, CBP published a notice in the **Federal Register** announcing CBP's plan to conduct an NCAP test concerning the electronic transmission of the PGA Message Set data elements required by FSIS for the importation of certain meat, poultry, and egg products to CBP through ACE. *See* 78 FR 75931 (December 13, 2013). Under this test, the PGA Message Set satisfied the FSIS data requirements for electronic entries filed in ACE and enabled the trade community to use the CBP-managed "single window" for the submission of data required by FSIS.

IV. Conclusion of the Successful PGA Message Set Test for FSIS Data

This notice announces that CBP has determined that ACE is fully capable of accepting electronic entries transmitted to ACE with the PGA Message Set data required for FSIS-regulated meat, poultry, and egg products. The electronic transmission of this data to ACE expedites delivery of this data to FSIS, thereby providing the data to FSIS before the products arrive for inspection. This allows FSIS to more effectively track and control shipments and improve compliance. Having found this test to be successful, CBP hereby concludes the test, effective October 11, 2016.

Dated: September 1, 2016.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2016–21673 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0086]

Agency Information Collection Activities: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers (CDSOA) (CBP Form 7401). CBP is proposing that this information collection be extended with a change to the burden hours. There is no change to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before November 8, 2016 to be assured of consideration.

ADDRESSES: All submissions received must include the OMB Control Number 1651–0086 in the subject box, the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@CBP.DHS.GOV,* email should include OMB Control number in Subject line.

(2) *Mail.* Submit written comments to CBP PRA Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 10th Floor, 90 K St. NE., Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via telephone (202) 325–0123. Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

OMB Number: 1651–0086.

Form Number: CBP Form 7401.

Abstract: This collection of information is used by CBP to make distributions of funds pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). 19 U.S.C. 1675c (repealed by the Deficit Reduction Act of 2005, Pub. L. 109–171, § 7601 (Feb. 8, 2006)). This Act prescribes the administrative procedures under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based on certain qualifying expenditures that they incur after the issuance of the order or finding up to the effective date of the CDSOA's repeal, October 1, 2007. This distribution is known as the continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

A notice is published in the **Federal Register** in June of each year in order to inform claimants that they can make claims under the CDSOA. In order to make a claim under the CDSOA, CBP Form 7401 may be used. This form is accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/* and can be submitted electronically through *https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895.*

Current Actions: This submission is being made to extend the expiration date and to revise the burden hours as a result of updated estimates of the number of CDSOA claims prepared on an annual basis. There are no changes to the information collected.

Type of Review: Extension (with a change to the burden hours).

Affected Public: Businesses.

Estimated Number of Respondents: 1,200.

Estimated Number of Responses per Respondent: 1.75.

Estimated Total Annual Responses: 2,100.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 2,100.

Dated: September 6, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–21727 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0019]

Agency Information Collection Activities: Vessel Entrance or Clearance Statement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Vessel of Entrance or Clearance Statement (CBP Form 1300). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before November 8, 2016 to be assured of consideration.

ADDRESSES:

All submissions received must include the OMB Control Number 1651–0019 in the subject box, the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@CBP.DHS.GOV,* Include OMB Control Number in the Subject.

(2) *Mail.* Submit written comments to CBP PRA Compliance Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 10th Floor, 90 K St. NE., Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via telephone (202) 325–0123, Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/.* For additional help: *https://help.cbp.gov/app/home/search/1.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Vessel Entrance or Clearance Statement.

OMB Number: 1651–0019.

Form Number: CBP Form 1300.

Abstract: CBP Form 1300, *Vessel Entrance or Clearance Statement,* is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports. The form allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects information about the vessel, cargo, purpose of entrance, certificate numbers, and expiration for various certificates. It also serves as a record of fees and tonnage tax payments in order to prevent overpayments. CBP Form 1300 was developed through agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. This form is authorized by 19 U.S.C. 1431, 1433, and 1434, and provided for by 19 CFR 4.7–4.9, and accessible at *http://www.cbp.gov/newsroom/publications/forms?title=1300.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: 22.

Estimated Total Annual Responses: 264,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 132,000.

Dated: September 2, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–21676 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0031]

Agency Information Collection Activities: Foreign Assembler's Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Foreign Assembler's Declaration (with Endorsement by Importer). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before November 8, 2016 to be assured of consideration.

ADDRESSES: All submissions received must include the OMB Control Number 1651–0031 in the subject box, the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@CBP.DHS.GOV,* email should include OMB Control number in Subject line.

(2) *Mail.* Submit written comments to CBP PRA Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 10th Floor, 90 K St NE., Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via telephone (202) 325–0123, Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Foreign Assembler's Declaration (with Endorsement by Importer).

OMB Number: 1651–0031.

Abstract: In accordance with 19 CFR 10.24, a Foreign Assembler's Declaration must be made in connection with the entry of assembled articles under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS). This declaration includes information such as the quantity, value and description of the imported merchandise. The declaration is made by the person who performed the assembly operations abroad and it includes an endorsement by the importer. The Foreign Assembler's Declaration is used by CBP to determine whether the operations performed are within the purview of subheading 9802.00.80, HTSUS and therefore eligible for preferential tariff treatment.

19 CFR 10.24(c) and (d) require that the importer/assembler maintain records for 5 years from the date of the related entry and that they make these records readily available to CBP for audit, inspection, copying, and reproduction. Instructions for complying with this regulation are posted on the CBP.gov Web site at: *http://www.cbp.gov/trade/trade-community/outreach-programs/trade-agreements/nafta/repairs-alterations/subchpt-9802.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents/Record-keepers: 2,730.

Estimated Time per Response/Recordkeeping: 55 minutes.

Estimated Number of Responses/Recordkeeping per Respondent: 128.

Estimated Total Annual Burden Hours: 320,087.

Dated: September 6, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–21726 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0012]

Agency Information Collection Activities: Lien Notice

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Lien Notice (CBP Form 3485). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before November 8, 2016 to be assured of consideration.

ADDRESSES: All submissions received must include the OMB Control Number 1651–0012 in the subject box, the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email:* Submit comments to: *CBP_PRA@CBP.DHS.GOV,* email should include OMB Control number in Subject line.

(2) *Mail:* Submit written comments to CBP PRA Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 10th Floor, 90 K St NE., Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via telephone (202) 325–0123. Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Lien Notice.

OMB Number: 1651–0012.

Form Number: 3485.

Abstract: Section 564, Tariff Act of 19, as amended (19 U.S.C. 1564) provides that the claimant of a lien for freight can notify CBP in writing of the existence of a lien, and CBP shall not permit delivery of the merchandise from a public store or a bonded warehouse until the lien is satisfied or discharged. The claimant shall file the notification of a lien on CBP Form 3485, Lien Notice. This form is usually prepared and submitted to CBP by carriers, cartmen and similar persons or firms. The data collected on this form is used by CBP to ensure that liens have been satisfied or discharged before delivery of the freight from public stores or bonded warehouses, and to ensure that proceeds from public auction sales are distributed to the lienholder. CBP Form 3485 is provided for by 19 CFR 141.112, and is accessible at *http://forms.cbp.gov/pdf/CBP_Form_3485.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There are no changes to the information collected or to Form 3485.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 112,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 28,000.

Dated: September 2, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–21677 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0006]

Agency Information Collection Activities: Application and Approval To Manipulate, Examine, Sample or Transfer Goods

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application and Approval to Manipulate, Examine, Sample or Transfer Goods (Form 3499). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before November 8, 2016 to be assured of consideration.

ADDRESSES: All submissions received must include the OMB Control Number 1651–0006 in the subject box, the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@CBP.DHS.GOV,* email should include OMB Control number in Subject.

(2) *Mail.* Submit written comments to CBP PRA Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 10th Floor, 90 K St. NE., Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via telephone (202) 325–0123. Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application and Approval to Manipulate, Examine, Sample or Transfer Goods.

OMB Number: 1651–0006.

Form Number: Form 3499.

Abstract: CBP Form 3499, *"Application and Approval to Manipulate, Examine, Sample or Transfer Goods,"* is used as an application to perform various operations on merchandise located at a CBP approved bonded facility. This form is filed by importers, consignees, transferees, or owners of merchandise, and is subject to approval by the port director. The data requested on this form identifies the merchandise for which action is being sought and specifies what operation is to be performed. This form may also be approved as a blanket application to manipulate goods for a period of up to one year for a continuous or repetitive manipulation. CBP Form 3499 is provided for by 19 CFR 19.8 and is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_3499.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Responses: 151,140.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 15,114.

Dated: September 2, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–21678 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[DHS Docket No. ICEB- 2013–0001]

RIN 1653–ZA10

Extension of and Addition to Employment Authorization for Syrian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of Civil Unrest in Syria Since March 2011

AGENCY: U.S. Immigration and Customs Enforcement (ICE), DHS.

ACTION: Notice.

SUMMARY: This notice informs the public of the extension of and addition to an earlier notice, which suspended certain requirements for F–1 nonimmigrant students whose country of citizenship is Syria and who are experiencing severe economic hardship as a direct result of the civil unrest in Syria since March 2011. This notice extends the effective date of that notice and expands the application of such suspension to students whose country of citizenship is Syria and who lawfully obtained F–1 nonimmigrant student status between the date of the original notice and September 9, 2016.

DATES: This notice is effective September 9, 2016 and will remain in effect until March 31, 2018.

FOR FURTHER INFORMATION CONTACT: Louis Farrell, Director, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *http://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary of Homeland Security is exercising his authority under 8 CFR 214.2(f)(9) to extend the suspension of the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Syria and who are experiencing severe economic hardship as a direct result of the civil unrest in Syria since March 2011. *See* 77 FR 20038 (April 3, 2012). This notice also suspends these same regulatory requirements for students whose country of citizenship is Syria and who lawfully obtained F–1 nonimmigrant student status between the date of the original notice and September 9, 2016. The original notice was effective from April 3, 2012 until October 3, 2013. A subsequent notice provided for an 18-month extension from October 3, 2013, through March 31, 2015. *See* 78 FR 36211 (June 17, 2013). A third notice provided another 18-month extension from March 31, 2015, through September 30, 2016. *See* 80 FR 232 (January 5, 2015). Effective with this publication, suspension of the employment limitations is extended for 18 months from September 30, 2016, until March 31, 2018. This publication also suspends the applicability of the same regulatory requirements in 8 CFR 214.2(f)(9) for students who meet the requirements contained in the notice below as of September 9, 2016.

F–1 nonimmigrant students granted employment authorization through the notice will continue to be deemed to be engaged in a "full course of study" for the duration of their employment authorization, provided they satisfy the minimum course load requirement described in 77 FR 20038. *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered under this action?

This notice applies exclusively to F–1 nonimmigrant students whose country of citizenship is Syria and who were lawfully present in the United States in F–1 nonimmigrant status on or after April 3, 2012, through September 9, 2016 under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i); and are—

(1) Enrolled in an institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment of F–1 students,

(2) Currently maintaining F–1 status, and

(3) Experiencing severe economic hardship as a direct result of the ongoing civil unrest in Syria since March 2011.

ICE records show that as of August 2016, there are approximately 700 Syrian F–1 Visa holders in active status who would be covered by this notice. This notice applies to both undergraduate and graduate students, as well as elementary school, middle school, and high school students. The notice, however, applies differently to elementary school, middle school, and high school students (see the discussion published at 77 FR 20040, available at *http://www.gpo.gov/fdsys/pkg/FR-2012-04-03/pdf/2012-7960.pdf,* in the question, "Does this notice apply to elementary school, middle school, and high school students in F–1 status?").

F–1 students covered by this notice who transfer to other academic institutions that are SEVP-certified for enrollment of F–1 students remain eligible for the relief provided by means of this notice.

Why is DHS taking this action?

The Department of Homeland Security (DHS) took action to provide temporary relief to F–1 nonimmigrant students whose country of citizenship is Syria and who experienced severe economic hardship because of the civil unrest in Syria since March 2011. *See* 77 FR 20038 (April 3, 2012). It enabled these F–1 students to obtain employment authorization, work an increased number of hours while school was in session, and reduce their course load, while continuing to maintain their F–1 student status. In June 2013 and again in January 2015, DHS acknowledged that the the civil unrest in Syria continued to affect Syria's citizens, with many people still displaced as a result. DHS extended the application of the original April 3, 2012, notice through September 30, 2016, to continue to provide temporary relief to Syrian F–1 students who experienced severe economic hardship as a result of the conflict. Despite DHS's determination that the civil conflict in Syria continued well beyond the October 3, 2013 expiration date of the original notice, previous extensions of the original notice did not make temporary relief available to Syrian F–1 students who became lawfully present in the United States in F–1 nonimmigrant status after April 3, 2012.

The conflict in Syria continues to affect the physical and economic security of its citizens. Syria is experiencing ongoing civil unrest, resulting in the continuing displacement of massive numbers of its citizens. As of October 2015, a United Nations report indicated that approximately 6.5 million Syrians were internally displaced. A number of violent extremist groups have factored prominently in the conflict and pose a danger to civilians. Various radical Islamist organizations have been actively engaged in armed resistance in

Syria. In early 2014, the Islamic State of Iraq and the Levant (ISIL) emerged as one of the most significant radical Islamist fighting forces. The al-Nusra Front (also known as Jabhat Fateh al-Sham and/orJabhat al Nusra) represents the interests of al-Qaeda in Syria. These jihadist groups have engaged in indiscriminate attacks including bombings and suicide attacks throughout Syria. Most recently on March 17, 2016, U.S. Secretary of State John Kerry declared that ISIL had committed acts of genocide against groups of people living in areas of Syria under ISIL control, including Yezidis, Christians, and Shia Muslims.

Furthermore, various aspects of the conflict including economic sanctions imposed by the international community have negatively affected the entire Syrian economy. A report published by the Syrian Center for Policy Research, referenced by a publication from the Carnegie Middle East Center in Beirut, indicated that by the end of 2014, 82% of Syrian people lived in poverty, and the country had an unemployment rate of 58%. The report also estimated that 877,000 people in Syria became poor in part due to economic sanctions. As of December 2014, the World Bank determined that the conflict in Syria significantly damaged public and private assets, with Syria's GDP having declined an average of 15.4%. The World Bank also assessed that inflation increased by almost 90% in 2013 and further increased an average of 29% in 2014. Given the conditions in Syria, affected students whose primary means of financial support come from Syria may need to be exempt from the normal student employment requirements to be able to continue their studies in the United States and meet basic living expenses.

The United States is committed to continuing to assist the people of Syria. DHS is therefore extending this employment authorization for F–1 nonimmigrant students whose country of citizenship is Syria and who are continuing to experience severe economic hardship as a result of the civil unrest since March 2011, including those who became lawfully present in F–1 nonimmigrant status between April 3, 2012, and September 9, 2016.

How do I apply for an employment authorization under the circumstances of this notice?

F–1 nonimmigrant students whose country of citizenship is Syria who were lawfully present in the United States on or after April 3, 2012, through September 9, 2016, and are experiencing severe economic hardship because of the civil unrest, may apply for employment authorization under the guidelines described in 77 FR 20038. This notice extends the time period during which such F–1 students may seek employment authorization due to the civil unrest. It does not impose any new or additional policies or procedures beyond those listed in the original notice. All interested F–1 students should follow the instructions listed in the original notice.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–21525 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0102]

Agency Information Collection Activities: Freedom of Information/ Privacy Act Request, Form G–639; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 8, 2016.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0102 in the subject box, the agency name and Docket ID USCIS–2008–0028. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0028;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha L. Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0028 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–639; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form G–639 is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under Freedom of Information/Privacy Act (FOIA/PA).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–639 is 163,000 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 40,750 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $615,250.

Dated: September 2, 2016.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–21664 Filed 9–8–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 12–07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 or send an email to *title5@hud.gov* for detailed instructions, or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*e.g.*, acreage, floor plan, condition of property, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of

Agriculture, OPPM, Property Management Division, Agriculture South Building, 300 7th Street SW., Washington, DC 20024, (202) 720–8873; AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland, TX 78236–9853, (315) 225–7384; ARMY: Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145; COE: Ms. Brenda Johnson-Turner, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314, (202) 761–7238; COAST GUARD: Mr. John Ericson, Commandant (CG–437), U.S Coast Guard, Stop 7714, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7714; (202) 475–5602; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; NAVY: Ms. Nikki Hunt, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; (These are not toll-free numbers).

Dated: September 1, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/09/2016

Suitable/Available Properties

Building

Colorado

East Central Board of Cooperative Educational Services Property
47156 State Highway 71
Limon CO 80828
Landholding Agency: GSA
Property Number: 54201630007
Status: Surplus
GSA Number: 7–GR–CO–0640–2
Comments: 46+ yrs. old; 2,640 sq. ft.; alternative school; possible asbestos & lead-based paint; remediation needed; contact GSA for more information.

Illinois

Rockford USARC
1130 Arthur Ave.
Rockford IL 61101
Landholding Agency: GSA
Property Number: 54201630006
Status: Surplus
GSA Number: 1–D–IL–800
Directions: Disposal Agency: GSA; Landholding Agency: Army; Unusual physical feature of property: only small portion flat, rest is heavily sloped as it abuts interstate hwy
Comments: 16,411 sq. ft.; office; 15+ months vacant; repairs needed; accessible by easement through neighboring company's parking lot; contact GSA for more details.

Kentucky

Two Vault Restroom Facilities
Cave Creek Recreation Area
14957 Falls of Rough
Rough River Lake KY
Landholding Agency: COE
Property Number: 31201630013
Status: Excess
Comments: off-site removal only; 19+ yrs. old; 40 sq. ft.; restroom facility; waste holding tanks are leaking; contact COE for more information.

Maine

Former Radio Communication
Link Repeater
78 Libby Hill Rd.
Gardiner ME 04345
Landholding Agency: GSA
Property Number: 54201630003
Status: Excess
GSA Number: 1–U–ME–0699–AA
Directions: Landholding Agency: Transportation; Disposal Agency: GSA
Comments: 381 sq. ft.; 40+ months vacant; sits on 2.05 +/− acres; contact GSA Real Property Utilization & Disposal for access at 617–565–5072.

2 Buildings
3 Customs Street
Calais ME 04619
Landholding Agency: GSA
Property Number: 54201630009
Status: Unutilized
GSA Number: ME–0698–AC
Comments: off-site removal only; 15+ yrs. old; 3,338 sq. ft.; difficult to relocate; storage & vehicle maintenance; 4+ mos. vacant; contact GSA for more information.

Missouri

TRL20C02, TRL–45649
Waterborne Toilet
1791 State Hwy UU
Blue Eye MO 65611
Landholding Agency: COE
Property Number: 31201630015
Status: Underutilized
Directions: Latitude: 36.55930839 Longitude: −93.32092854
Comments: 44+ yrs. old; 10′ 8″ × 24′ sq. ft.; restroom facility; building in disrepair due to crack in the walkways, eroded plumbing & failing wastewater line, contact COE for more information.

U.S. Army Reserve Center #2
4100 Goodfellow Blvd.
St. Louis MO 63120
Landholding Agency: GSA
Property Number: 54201630008
Status: Surplus
GSA Number: 7–D–MO–0857–AA
Directions: Disposal Agency: GSA, Landholding Agency: COE
Comments: 45+ yrs. old; 32,368 sq. ft.; office/classroom; 24+ mos. vacant; leaky roof; possible mold & asbestos; prior approval needed to gain access; contact GSA for more information.

Land

Iowa

Exira Repeater Site
41.590672, −94.954396
Exira IA 50076
Landholding Agency: GSA
Property Number: 54201630005
Status: Surplus
GSA Number: 7–D–IA–0521–AA
Directions: Disposal Agency: GSA, Land Holding Agency: DOE
Comments: 5.06 acres of land; contact GSA for more information.

Suitable/Unavailable Properties

Building

Alabama

Gadsden Federal Building and Courthouse
600 Broad Street
Gadsden AL 35901
Landholding Agency: GSA
Property Number: 54201620018
Status: Excess
GSA Number: 4–G–AL–0805–AA
Comments: 105+ yrs. old; 17,488 sq. ft.; office & courthouse; listed on the national historic register; access must be coordinated, contact GSA for more information.

Unsuitable Properties

Building

Alabama

ARS Fish Experiment/Storage
RPUID 03.55627 Building (642000B064)
990 Wire Road
Auburn AL 36832
Landholding Agency: Agriculture
Property Number: 15201630012
Status: Excess
Comments: decades of termite and decay damage; unsound foundation; numerous gaps/cracks in structure interior walls are crumbling.
Reasons: Extensive deterioration.

ARS Nutrition Experiment
Building (642000B058)
990 Wire Road
Auburn AL 36832
Landholding Agency: Agriculture
Property Number: 15201630013
Status: Excess
Comments: decades of termite and decay damage; unsound foundation; numerous gaps/cracks in structure interior walls are crumbling.
Reasons: extensive deterioration

California

8 Building
Polaris Drive MFHPMHSG
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201630015
Status: Excess
Directions: 1000 unit 1340, 1001–1341, 1002–1342, 1003–1343, 1004–1344, 1005–1345, 1006–1346, 1007–1773
Comments: public access denied and no alternative method to gain access without compromising national security; contaminants that are located on property, was used for chemical agent training of troops.

Reasons: Secured Area

Building 1257
1012 Oriole Dr Unit 1257
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201630016
Status: Excess
Comments: public access denied and no alternative method to gain access w/out comp. nat. sec.; contaminants that are located on property, (Gas Mask Training); was used for chemical agent training of troops.
Reasons: Secured Area; Contamination

11 Buildings
Sparrow Drive MFHPMHSG
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201630017
Status: Excess
Directions: 1101 unit 1453, 1103–1454, 1105–1455, 1107–1456, 1109–1457, 1111–1458, 1112–1459, 1113–1460, 1114–1461, 1115–1462, 1117–1463
Comments: public access denied and no alter. method to gain access w/out comp. nat. sec.; contaminants that are located on property, (Gas Mask Training); was used for chemical agent train. of troops.
Reasons: Contamination; Secured Area

11 Buildings
Main A/B MFHPMHSG
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201630018
Status: Excess
Directions: 1802 A/B, 1804 A/B, 1806 A/B, 1808 A/B, 1810 A/B, 1812 A/B, 1814 A/B, 1816 A/B, 1818 A/B, 1820 A/B, 1822 A/B
Comments: public access denied and no alternative method to gain access w/out comp. nat. sec.; contaminants that are located on property, (Gas Mask Training); was used for chemical agent training of troops.
Reasons: Secured Area; Contamination

1800 Main A/B MFHPMHSG
1800 Main A/B
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201630019
Status: Excess
Comments: public access denied and no alternative method to gain access w/out comp. nat. sec.; contaminants that are located on property, (Gas Mask Training); was used for chemical agent training of troops.
Reasons: Contamination; Secured Area

6 Buildings
Terrier MFHPMHSG
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201630020
Status: Excess
Directions: 1835 units 1617+1618, 1837 units 1621+1622, 1839 units 1624+1625, 1841 units 1625+1783, 1843 units 1626+1627, 1845 units 1628+1629
Comments: public access denied and no alternative method to gain access w/out comp. nat. sec.; contaminants that are located on property, (Gas Mask Training); was used for chemical agent training of troops.
Reasons: Secured Area; Contamination

25 Buildings
Tomahawk MFHPMHSG
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201630021
Status: Excess
Directions: 2084 unit 1689, 2085–1690, 2086–1691, 2087–1691, 2088–1693, 2089–1694, 2090–1695, 2091–1696, 2092–1697, 2094–1698, 2096–1699, 2098–1786, 2100–1700, 2101–1701, 2102–1702, 2103–1703, 2104–1704, 2105–1705, 2106–1706, 2107–1707, 2108–1708, 2109–1709, 2110–1710, 2111–1711, 2113–1712
Comments: public access denied and no alternative method to gain access w/out comp. nat. sec.; contaminants that are located on property, (Gas Mask Training); was used for chemical agent training of troops.
Reasons: Secured Area; Contamination

21 Buildings
Patriot MFHPMHSG
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201630022
Status: Excess
Directions: 2115 unit 1309, 2117–1310, 2119–1311, 2121–1312, 2123–1313, 2125–1314, 2127–1315, 2129–1316, 2131–1308, 2133–1317, 2135–1318, 2137–1319, 2139–1320, 2141–1321, 2142–1322, 2143–1323, 2144–1324, 2145–1325, 2146–1326, 2147–1327, 2148–1328
Comments: public access denied and no alternative method to gain access w/out comp. nat. sec.; contaminants that are located on property, (Gas Mask Training); was used for chemical agent training of troops.
Reasons: Contamination; Secured Area

Florida

15 Buildings
Eglin AFB
Eglin AFB FL 32542
Landholding Agency: Air Force
Property Number: 18201630005
Status: Unutilized
Directions: 9522, 2818, 920, 9405, 9455, 2819, 2821, 2826, 3059, 9606, 9608, 9457, 9458, 2571, 921
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

2 Buildings
Eglin AFB
Eglin AFB FL 32542
Landholding Agency: Air Force
Property Number: 18201630006
Status: Unutilized
Directions: Building 6016 & 9306
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Georgia

3 Buildings
West Point Lake
Troup County GA 31833
Landholding Agency: Army
Property Number: 21201630049
Status: Unutilized
Directions: Floating Boat Storage Cover, Picnic Shelter, Vault Toilet
Comments: property located within floodway which has not been correct or contained.
Reasons: Floodway

3 Buildings
West Point Lake
Troup County GA 31833
Landholding Agency: COE
Property Number: 31201630012
Status: Unutilized
Directions: Floating Boat Storage Cover, Picnic Shelter, Vault Toilet
Comments: property located within floodway which has not been correct or contained.
Reasons: Floodway

Vault Toilet
West Point Lake
West Point Lake GA
Landholding Agency: COE
Property Number: 31201630017
Status: Unutilized
Comments: documented deficiencies: significant roof damage; overgrown by vegetation; extensive damaged caused by vandalism; clear threat to physical safety.
Reasons: Extensive deterioration

5 Pit Toilets
4144 Russell Dam Dr.
Elberton GA 30635
Landholding Agency: COE
Property Number: 31201630021
Status: Unutilized
Directions: Property ID # RBR–18148, Acc. # SPEC01; Property ID # RBR–17284, Acc. # MR–C01; Property ID # RBR–16229, Acc. # DF–C01; Property ID # RBR–16601, Acc. # GS–C01; Property ID # RBR–16602, Acc. # GS–C02
Comments: documented deficiencies: unsalvageable; clear threat to physical safety.
Reasons: Extensive deterioration

Property ID# HAR–16226
5625 Anderson Hwy
Hartwell GA 30643
Landholding Agency: COE
Property Number: 31201630022
Status: Unutilized
Comments: documented deficiencies: structural unsound; clear threat to physical safety.
Reasons: Extensive deterioration

Indiana

00011
Camp Atterbury
Edinburgh IN 46124
Landholding Agency: Army
Property Number: 21201630053
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Louisiana

Building 263B
400 Russell Avenue
New Orleans LA 70143
Landholding Agency: Navy
Property Number: 77201630014
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

Massachusetts

COMMSTA Boston Shed
4700 Greenway Rd.
Forestdale MA 02644
Landholding Agency: Coast Guard
Property Number: 88201630003
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Missouri

TRL06C02, TRL–45476,
Waterborne Toilet
HC 1 Box 1037
Eagle Rock MO 65641
Landholding Agency: COE
Property Number: 31201630014
Status: Underutilized
Directions: HC 1 Box 1037
Comments: doc. deficiencies: doc. provided represents a clear threat to personal physical safety; build. in disrepair due to cracks in the foundation, walls & s/walks eroded plumbing & failing wastewater lines.
Reasons: Extensive deterioration

Oregon

Waldport RS Upper Storage
Building (1533.005251) 07668 05
1130 Forestry Lane
Waldport OR 97394
Landholding Agency: Agriculture
Property Number: 15201630018
Status: Underutilized
Comments: documented deficiencies: significant roof damage; clear threat to physical safety.
Reasons: Extensive deterioration

Texas

6 Buildings
Red River Army depot
Texarkana TX 75507
Landholding Agency: Army
Property Number: 21201630052
Status: Excess
Directions: 1124 (218493); 1123 (218492); 396 (221605); 2369 (368512); 1176 (222650); 1158 (368416)
Comments: documented deficiencies: properties suffer from extensive roof damage; significant water damage due to roof leaks; structural integrity compromised; clear threat to physical safety.
Reasons: Extensive deterioration

Virginia

Tract 01–142 Land's House & Land's Shed
1685 Hickory Hill Rd.
Petersburg VA 23803
Landholding Agency: Interior
Property Number: 61201630014
Status: Excess
Comments: documented deficiencies: condemned; structurally unsound; clear threat to physical safety.
Reasons: Extensive deterioration

NH–28
Naval Support Activity
Hampton Roads
Norfolk VA 23551
Landholding Agency: Navy
Property Number: 77201630013
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

2 Buildings
Naval Support Activity (NSA)
Hampton Roads (HR)
Norfolk VA 23551
Landholding Agency: Navy
Property Number: 77201630023
Status: Excess
Directions: Building NH–5 & NH41
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Wyoming

540900B009—Phone System Bldg.
8500 Hildreth Road
Cheyenne WY 82002
Landholding Agency: Agriculture
Property Number: 15201630014
Status: Unutilized
Directions: RPUID:03.50992
Comments: documented deficiencies: cracks in foundation; clear threat to physical safety.
Reasons: Extensive deterioration

Suitable/Available Properties

Building

Iowa

Creston Memorial U.S.
Army Reserve Center
705 East Taylor Street
Creston IA 50801
Landholding Agency: GSA
Property Number: 54201620015
Status: Surplus
GSA Number: 7–D–IA–0520–AA
Directions: RPUID:629976; Disposal Agency: GSA; Landholding Agency: Corp of Engineers
Comments: 57+ yrs. old; 6,500 sq. ft.; training facility; 29+ mos. vacant; sits on 2.22 acres of land; contact GSA for more information.

Suitable/Unavailable Properties

Building

Alabama

Former National Guard Support Facility
Intersection of 23rd & Industrial Dr.
Cullman AL 33055
Landholding Agency: GSA
Property Number: 54201620013
Status: Excess
GSA Number: 4–D–AL–0818–AA
Directions: Disposal Agency: GSA; Landholding Agency: COE
Comments: 19,850 sq. ft.; storage/warehouse; 80% occupied; several roof leaks resulting in floor damage; contact GSA for more information.

Historic Hannah Houses
157 and 159 N Conception Street
Mobile AL 36603
Landholding Agency: GSA
Property Number: 54201620020
Status: Excess
GSA Number: 4–G–AL–0817AAA
Comments: 163+ yrs. old; 8,868 sq. ft.; office; residential; vacant 120+ mos.; rehabilitation work needed; contact GSA for more information.

Arizona

San Carlos Irrigation Project
BIA Old Main Office Bldg.
255 W. Roosevelt
Coolidge AZ 85128
Landholding Agency: GSA
Property Number: 54201440008
Status: Surplus
GSA Number: 9–I–AZ–1706–AA
Directions: Disposal Agency; GSA; Landholding Agency: Bureau of Indian Affairs.
Comments: 83+ yrs. old; 6,745 sq. ft.; 36mos. vacant; residential and commercial; brick structure; fair condition; asbestos & lead based paint; contact GSA for more information.

Arkansas

Former Eaker AFB Recreational Property
630 Lansing Street
Blytheville AR 72315
Landholding Agency: GSA
Property Number: 54201620026
Status: Excess
GSA Number: 7–GR–AR–0582
Comments: 45+ yrs. old; 36,000 sq. ft.; recreational; building is in disrepair; accessible by appointment only; sits on 48.73 fee acres; contact GSA for more information.

California

Hawthorne Federal Building
15000 Aviation Blvd.,
Hawthorne CA 90250
Landholding Agency: GSA
Property Number: 54201620009
Status: Surplus
GSA Number: 9–G–CA–1695–AB
Directions: Built in 1971; listed on the National Register of Historic Places due to architecture significance; 168,874 sq. ft.; office; serious deficiencies—urgent seismic upgrades, outdated building systems, and environmental concerns
Comments: contact GSA for more information.

Connecticut

Shepard of the Sea Chapel & Community Center
231 Gungywamp Rd.
Groton CT 06340
Landholding Agency: GSA
Property Number: 54201510010
Status: Excess
GSA Number: CT–0933
Directions: Disposal Agency: GSA; Landholding Agency: Navy
Comments: 49+ yrs.-old; 28,777 sq. ft.; vacant 48+ mons.; wood & concrete; severe water damage; mold; sits on 13.5 acres; contact GSA for more information.

District of Columbia

49 L Street
49 L St. SE
Washington DC 20003
Landholding Agency: GSA
Property Number: 54201520003
Status: Excess
GSA Number: DC–496–1
Comments: 32,013 sq. ft.; storage; 67+ mons. vacant; poor condition; roof leaks;

extensive structural repairs needed; cracks in walls; contamination; est. repair cost $4,000,000; contact GSA for more info.

Cotton Annex
300 12th Street, SW
Washington DC 20024
Landholding Agency: GSA
Property Number: 54201620003
Status: Excess
GSA Number: DC–0510–AB
Comments: 118,456 sq. ft., office/product testing facility sited of 1.42 acres; 108+ months vacant poor conditions PBCs; asbestos; lead; remediation needed; contact GSA for more information.

Illinois

(MED) Outer Marker (OM) Facility
297 Spring Lake Drive
Itasca IL 60143
Landholding Agency: GSA
Property Number: 54201540006
Status: Surplus
GSA Number: 1–U–IL–805
Directions: Land Holding Agency: FAA; Disposal Agency: GSA
Comments: .441 acres; FAA tower site; contact GSA for more information.

Federal Bldg. & Courthouse
201 N. Vermillion St.
Danville IL 61832
Landholding Agency: GSA
Property Number: 54201610003
Status: Excess
GSA Number: 1–G–IL–810
Comments: 67,845 sq. ft.; office & courthouse; good condition; asbestos and LBPs identified; remediation needed; contact GSA for more information

4 Buildings
202–220 S. State Street
Chicago IL 60604
Landholding Agency: GSA
Property Number: 54201620016
Status: Excess
GSA Number: 1–G–IL–0812–AA
Directions: Building 202 (68,200 sq. ft.); 208 (11,499 sq. ft.); 214 (7,200 sq. ft.); 220 (198,400 sq. ft.)
Comments: 96+ – 128+ yrs. old; poor to very poor conditions; major repairs needed; sq. ft. above; office & commercial; 18+ – 24+ mos. vacant; Contact GSA for more information.

Louisiana

3 Buildings & 12.9 Fee Acres
400 Edwards Ave./Harahan FSS Depot
Elmwood LA 70123
Landholding Agency: GSA
Property Number: 54201610009
Status: Surplus
GSA Number: 7–G–LA–0532–AA
Directions: Warehouse 201,964.79 sq. ft.; office/garage 5,034.67 sq. ft.; pump house 1,493.33 sq. ft.
Comments: 47+ yrs. old; warehouse storage; roof leaks; walls deteriorated; contact GSA for more information.

Baton Rouge Depot
2695 North Sherwood Forest Drive
Baton Rouge LA 70814
Landholding Agency: GSA
Property Number: 54201620025
Status: Surplus
GSA Number: 7–G–LA–0523–AH
Directions: Baton Rouge Depot building's (Building 74–20,000 sq. ft.; Building 28–20,000 sq. ft., Building 70–2,312 sq. ft.)
Comments: 67+ yrs. old; 42,312 total sq. ft.; warehouse, storage; 8+ mos. vacant; sits on 128.50 acres of land; contact GSA for more information.

Michigan

Natl Weather Svc Ofc
214 West 14th Ave.
Sault Ste. Marie MI
Landholding Agency: GSA
Property Number: 54200120010
Status: Excess
GSA Number: 1–C–MI–802
Comments: 2230 sq. ft., presence of asbestos, most recent use—office.

Former Newport Nike Missile
Site D–58
800 East Newport Road
Newport MI 48166
Landholding Agency: GSA
Property Number: 54201530010
Status: Excess
GSA Number: 1–D–MI–0536
Directions: Disposal Agency: GSA? Landholding Agency: COE
Comments: 70+ yrs. old; 3 buildings totaling 11,447 sq. ft.; sits on 36.35 acres; industrial; training site; extremely poor/hazardous condition; remediation required; contact GSA for more information.

Minnesota

Erving L. Peterson Memorial
USARC
1813 Industrial Blvd.
Fergus Falls MN 56537
Landholding Agency: GSA
Property Number: 54201520012
Status: Excess
GSA Number: 1–D–MN–0599–AA
Directions: Disposal Agency: GSA; Landholding Agency: US Army Reserve Command
Comments: The property consists of a 6-acre parcel of land w/an 18,537 sf admin. bldg. and 1,548 sf maintenance bldg..; u7ygifycontact GSA for more information.

FM Repeater Station Install. #3
Sec. 24, T. 105N, R 5W
Dresbach MN
Landholding Agency: GSA
Property Number: 54201540004
Status: Excess
GSA Number: 1–D–MN–598
Directions: Land Holding Agency: COE; Disposal Agency: GSA
Comments: 50+ yrs. old; 80 sq. ft.; storage; average condition; contact GSA for more information.

Henry H. Sibley USARC
600 N. Brown Avenue
Winthrop MN 55396
Landholding Agency: GSA
Property Number: 54201620002
Status: Excess
GSA Number: 1–D–MN–0601–AA
Directions: Landholding Agency. US Army Reserve, Disposed Agency GSA
Comments: 3.67-acre parcel of land with an 4.316 sq. ft. admin. Building & 1,170 Sq. ft. maintenance building; contact GSA for more information.

Missouri

3 Buildings
90, 91 & 92 Grant Avenue
St. Louis MO 63125
Landholding Agency: GSA
Property Number: 54201610011
Status: Surplus
GSA Number: 7–D–MO–0421–6
Directions: Former St. Louis Air Force Station Family Housing Annex; Disposal Agency: GSA; Landholding Agency: AF
Comments: 77+ yrs. old; 19,350 sq. ft.; 15+ yrs. vacant; residential; buildings in state of disrepair; listed on Nat'l Register of Historic Places; contact GSA for more information.

Nevada

Alan Bible Federal Bldg.
600 S. Las Vegas Blvd.
Las Vegas NV 89101
Landholding Agency: GSA
Property Number: 54201210009
Status: Surplus
GSA Number: 9–G–NV–565
Directions: building does not meet GSA's life/safety performance objective
Comments: 81, 247 sq. ft. suited on 0.55 acres; extensive structural issues; major repairs needed; Federal Office Bldg.; 25–30% occupied until Dec. 2016; contact GSA for more info.

2 Buildings
Military Circle
Tonopah NV
Landholding Agency: GSA
Property Number: 54201240012
Status: Excess
GSA Number: 9–I–NV–514–AK
Directions: bldg. 102: 2,508 sf.; bldg. 103: 2,880 sf.
Comments: total sf. for both bldgs. 5,388; Admin.; vacant since 1998; sits on 0.747 acres; fair conditions; lead/asbestos present.

Boulder City Airport
Hangar TW 4–1
1201 Airport Rd.,
Boulder City NV 89005
Landholding Agency: GSA
Property Number: 54201620014
Status: Surplus
GSA Number: 9–I–NV–0575–AA
Directions: Disposal Agency GSA; Landholding Agency: Interior
Comments: Off-site removal only; 27+ yrs. old; 1,600 sq. ft.; storage; 16+ mos. vacant; fair condition; no future agency need; contact GSA for more information.

New Jersey

Portion of former Sievers-Sandberg US Army Reserves Center (Camp Pedric
Artillery Ave at Garrison St.
Oldmans NJ 08067
Landholding Agency: GSA
Property Number: 54201320003
Status: Surplus
GSA Number: 1–D–NJ–0662–AB
Directions: On the north side of Rte. 130, between Perkintown Road (Rte. 644) and Pennsgove-Pedricktown Rd (Rte. 642)
Comments: #171; mess hall bldg. #173; 14,282 total sf.; fair/poor conditions; asbestos/lead-based paint; potential legal constraints in accessing property; Contact GSA for more info.

Portion of Former Sievers-Sandberg U.S. Army Reserves Center—Tract 1
NW Side of Artillery Ave. at Rte. 130
Oldmans NJ 08067
Landholding Agency: GSA
Property Number: 54201320015
Status: Excess
GSA Number: 1–D–NJ–0662–AA
Directions: Previously reported under 54200740005 as suitable/available; 16 bldgs. usage varies: barracks/med./warehouses/garages; property is being parcelized.
Comments: 87,011 sf.; 10+ yrs. vacant fair/poor conditions; property may be landlocked; transferee may need to request access from Oldmans Township planning & zoning comm.; contact GSA for more info.

New York

Portion of GSA Binghamton
“Hillcrest” Depot—Tract 1
1151 Hoyt Ave.
Fenton NY 13901
Landholding Agency: GSA
Property Number: 54201320017
Status: Surplus
GSA Number: 1–G–NY0760–AC
Directions: Previously reported on March 24, 2006 under 54200610016; this property includes 40 acres of land w/6 structures; property is being parcelized
Comments: warehouses range from approx. 16,347 sf.–172,830 sf.; admin. bldg. approx. 5,700 sf; guard house & butler bldg. sf. is unknown; 10 vacant; fair conditions; bldgs. locked; entry by appt. w/GSA.

A Scotia Depot
One Amsterdam Road
Scotia NY 12302
Landholding Agency: GSA
Property Number: 54201420003
Status: Surplus
GSA Number: NY–0554–4
Directions: Previously reported in 2006 but has been subdivided into smaller parcel.
Comments: 325,000 sq. ft.; storage; 120+ months vacant; poor conditions; holes in roof; contamination; access easement, contact GSA for more information.

Michael J. Dillon
U.S. Memorial Courthouse
68 Court Street
Buffalo NY 14202
Landholding Agency: GSA
Property Number: 54201540010
Status: Excess
GSA Number: NY–0993–AA
Comments: 180950 gross sq. ft.; sits on 0.75 acres; 48+ months vacant; asbestos/LBP maybe present; eligible for Nat’l Register; subject to Historic Preserv. covenants; contact GSA for more info.

North Carolina

Johnson J. Hayes Federal Build
207 West Main Street
Wilkesboro NC 28697
Landholding Agency: GSA
Property Number: 54201540015
Status: Excess
GSA Number: NC–0735–AB
Directions: Take US Highway 421 North toward Wilkesboro/Boone; Take exit 286A; Turn left onto NC–16/NC–18/S Cherry St.; Continue to follow NC–18/S Cherry St.; Turn right onto NC–18/NC–268/W Main St.; Basement—6,870 usable square feet (usf); First Floor—15,755 usf; Second Floor—16,118 usf; Total—38,743 usf
Comments: 47+ yrs. old; 38,743 Gross Square Feet.; office & courtroom; good condition; lease becomes month-to-month 02/2016; asbestos; contact GSA for more information.

Bryson City Federal Building and Courthouse
50 Main Street
Bryson City NC 28713
Landholding Agency: GSA
Property Number: 54201620019
Status: Excess
GSA Number: 4–G–NC–0838–AA
Comments: 54+ yrs. old; 34,156 sq. ft.; office & courthouse; access must be coordinated; lease expires less than 6 mos.; sits on 1.3 acres of land; contact GSA for more information.

Ohio

N. Appalachian Experimental
Watershed Research Ctr.
28850 State Rte. 621
Coshocton OH 43824
Landholding Agency: GSA
Property Number: 54201420006
Status: Excess
GSA Number: 1–A–OH–849
Directions: Landholding Agency: Agriculture; Disposal Agency: GSA
Comments: 70,539 total sq. ft. for two bldgs.; storage/office; fair to poor conditions; lead-based paint; asbestos; PCBs; mold; remediation required; contact GSA for more information.

Oregon

FAA Non Directional Beacon
(NDB) sites on 0.92 acres
93924 Pitney Lane., Sec 6, T 16S R4W, W.M.
Junction City OR 97448
Landholding Agency: GSA
Property Number: 54201540009
Status: Unutilized
GSA Number: 9–OR–0806
Directions: Disposal Agency: GSA; Landholding Agency: FAA; Tax Lot number 16040600; Lane County zoning is a 5 AC min. for residential (RR5)
Comments: 25+ yrs. old; 50 sq. ft.; storage; 24+ mos. vacant; poor condition; 0.92 acres of land; contact GSA for more information.

12 Buildings
580 Fish Lake Road
Butte Falls OR 97522
Landholding Agency: GSA
Property Number: 54201620004
Status: Excess
GSA Number: 9–I–OR–0787AA
Directions: Buildings 15111–1,800 sq. ft.; 15039–192; 15114–1,222; 15112–1,416; 15029–240; 15014–6,750; 15034–2,700; 15036–396; 15037–400; 15028–150; 15033–880; 15054–unknown; 15032–unknown
Comments: 63+ – 85+ yrs. old; historic buildings; fish hatchery w/residences; 60+ mos. vacate; contact GSA for more information.

South Carolina

Former US Vegetable Lab
2875 Savannah Hwy
Charleston SC 29414
Landholding Agency: GSA
Property Number: 54201310001
Status: Excess
GSA Number: 4–A–SC–0609AA
Directions: headhouse w/3 greenhouses, storage bins
Comments: 6,400 sf.; lab; 11 yrs. vacant; w/in 100 yr. floodplain/floodway; however, is contained; asbestos & lead based paint.

Texas

Austin U.S. Courthouse
200 W. 8th Street
Austin TX 78701
Landholding Agency: GSA
Property Number: 54201620010
Status: Excess
GSA Number: 7–G–TX–1170–AA
Comments: 63,264 sq. ft.; sits on 0.81 fee acres; on National Register of Historic Places; contact GSA for more information.

Washington

USARC Moses Lake
Arnold Dr., at Newell St.,
Building 4306
Moses Lake WA 98837
Landholding Agency: GSA
Property Number: 54201610010
Status: Excess
GSA Number: 9–I–WA–1141
Directions: Sits on 2.86 acres? Direction: Disposal Agency GSA; Landholding Agency: Nat’l Park Service
Comments: 62+ yrs. old; 4,499 sq. ft.; boys & girls club; 4+ yrs. vacant; roof needs repairs; contact GSA for more information.

Wenatchee Federal Building
301 Yakima Street
Wenatchee WA 98001
Landholding Agency: GSA
Property Number: 54201620012
Status: Excess
GSA Number: 9–G–WA–1286
Directions: The property is leased to governmental tenants and will continue to be leased 24 months from the date of sale with the option, to renew for a 5-year term
Comments: 104,414 sf 4 story office building with full basement and mechanical penthouse constructed in 1973 on a 2.7-acre lot with 129 parking spaces; contact GSA for more information.

N Border Housing at the Laurie
LOPE
27107 Highway 395 North
Laurier WA 99146
Landholding Agency: GSA
Property Number: 54201620022
Status: Excess
GSA Number: 9–G–WA–1297–AA
Comments: Off-site removal only; 80+ yrs. old; 1,970 sq. ft.; due to size/+yrs. relocation extremely difficult; storage; 144+ mos. vacant; contacts GSA for more information.

South Border Housing at the
Laurier LOPE
27107 Highway 395 North
Laurier WA 99146
Landholding Agency: GSA
Property Number: 54201620023
Status: Excess
GSA Number: 9–G–WA–1297–AB
Comments: Off-site removal only; 80+ yrs. old; 2,200 sq. ft.; due to size/+yrs.

relocation extremely difficult storage; 144+ mos. vacant; contact GSA for more information.

West Virginia

Naval Information Operations
Center
133 Hedrick Drive
Sugar Grove WV 26815
Landholding Agency: GSA
Property Number: 54201430015
Status: Excess
GSA Number: 4–N–WV–0560
Directions: Land holding agency—Navy; Disposal Agency GSA
Comments: 118 Buildings; 445,134 sq. ft.; Navy base; until 09/15 military checkpoint; wetlands; contact GSA for more info.

Wisconsin

FM Repeater Station Install.#3
Sec. 36, T. 25N, R 13W
Bay City WI
Landholding Agency: GSA
Property Number: 54201540002
Status: Excess
GSA Number: 1–D–WI–621
Directions: Land Holding Agency: COE; Disposal Agency: GSA
Comments: 50+ yrs. old; 80 sq. ft.; storage; average condition; contact GSA for more information.

FM Repeater Station Install.#3
Sec. 26, T. 9N, R 6W
Lynxville WI 54626
Landholding Agency: GSA
Property Number: 54201540003
Status: Excess
GSA Number: 1–D–WI–622
Directions: Land Holding Agency: COE; Disposal Agency: GSA
Comments: CORRECTION from June 24 FR: Property is suitable and unavailable; reason: Advertised for sale; 50+ yrs. old; 80 sq. ft.; storage; average condition; contact GSA for more information.

Social Security Office Bldg.
606 N. 9th Street
Sheboygan WI
Landholding Agency: GSA
Property Number: 54201540012
Status: Excess
GSA Number: 1–W–623–AA
Directions: WI0098ZZ
Comments: 37+yrs. old; 4,566 sq. ft.; office building; contact GSA for more information.

Land

California

Delano Transmitting Station
1105 Melcher Rd.
Delano CA 93215
Landholding Agency: GSA
Property Number: 54201330005
Status: Excess
GSA Number: 9–X–CA–1671
Directions: Landholding Agency: Broadcasting Board of Governors Disposal Agency: GSA
Comments: 800 acres; mostly land and some blogs.; unavailable due to Federal interest; transmitting station; vacant since 2007; access can be gain by appt. only; contact GSA for more info.

FAA Sacramento Middle Maker
Site
1354 Palomar Circle
Sacramento CA 95831
Landholding Agency: GSA
Property Number: 54201530007
Status: Surplus
GSA Number: 9–U–CA–1707–AA
Directions: Disposal Agency: GSA; Landholding Agency: FAA
Comments: 0.29 Acres; contact GSA for more information.

Florida

Former Outer Maker Site
105th Ave. North
Royal Palm Beach FL 33411
Landholding Agency: GSA
Property Number: 54201610001
Status: Surplus
GSA Number: 4–U–FL_1332AA
Directions: Landholding Agency: FAA; Disposal Agency: GSA
Comments: 0.92 acres; contact GSA for more information.

Former Radio Communication
Receiver Site
SW Kanner Hwy
Martin FL 34956
Landholding Agency: GSA
Property Number: 54201610002
Status: Surplus
GSA Number: 4–U–FL–1321
Directions: Landholding Agency: FAA; Disposal Agency: GSA
Comments: 1.06 acres; contact GSA for more information.

Illinois

FAA Outer Marker
5549 Elizabeth Place
Rolling Meadows IL
Landholding Agency: GSA
Property Number: 54201430004
Status: Excess
GSA Number: I–U–IL–807
Directions: Landholding Agency; FAA; Disposal Agency; GSA
Comments: 9,640 sq. ft.; 12+ months vacant; outer marker to assist planes landing at O'Hare Airport; contact GSA for more information.

Nevada

Ditchrider South East Street
207 South East St.
Fallon NV 89406
Landholding Agency: GSA
Property Number: 54201440007
Status: Surplus
GSA Number: 9–I–NV–0572–AA
Directions: Disposal Agency; GSA; Land Holding Agency; Interior.
Comments: 0.32 acres; formerly used us contractor/employee housing structure demolished on land 02/2011. Contact GSA for more information.

USGS Elko Parcel
1701 North 5th Street
Elko NV 89801
Landholding Agency: GSA
Property Number: 54201540013
Status: Surplus
GSA Number: 9–I–NV–0465–AE
Directions: previous "H Facility"
Comments: 0.90 acres; contact GSA for more information.

New Jersey

49 Acres
Woodbridge Avenue
Edison NJ 08817
Landholding Agency: GSA
Property Number: 54201610006
Status: Excess
GSA Number: NJ–0944–AA
Comments: 49 acres, contact GSA for more information.

Oklahoma

Caney Creek
33.925152–96.690155
Unincorporated OK 73152
Landholding Agency: GSA
Property Number: 54201610005
Status: Excess
GSA Number: 7–G–OK–0852–AA
Comments: 9.82 acres; endangered species in area not specially on land; contact GSA for more information.

Oregon

Crowfoot Road Egg Taking
Station
Crowfoot Road
Jackson OR 97522
Landholding Agency: GSA
Property Number: 54201620001
Status: Excess
GSA Number: 9–I–OR–0787 AB
Directions: Landholding Agency; FWS; Disposal Agency; GSA
Comments: 10.23 acres; contact GSA for more information.

South Carolina

Marine Corps Reserve Training Center
2517 Vector Ave.
Goose Creek SC 29406
Landholding Agency: GSA
Property Number: 54201410009
Status: Excess
GSA Number: 4–N–SC–0630–AA
Directions: Landholding Agency: Navy; Disposal Agency: GSA
Comments: 5.59 acres; contact GSA for more information.

Formerly the FAA's D7 Remote
Communications Link Receiver Fac.
Latitude N. 33.418194 & Longitude W. 80.13738
Eadytown SC
Landholding Agency: GSA
Property Number: 54201540011
Status: Surplus
GSA Number: 4–U–SC–0633–AA
Directions: Landholding Agency: Transportation; Disposal Agency: GSA
Comments: 5.5 acres; Remote Communications Link Receiver Facility; contact GSA for more information.

Tennessee

Parcel ED–3 E
and W (168.30 +/− acres)
South Side of Oak Ridge Turnpike
Oak Ridge TN 37763
Landholding Agency: GSA
Property Number: 54201520015
Status: Surplus
GSA Number: 4–B–TN–0664–AG
Directions: GSA- Disposal Agency; Energy- Landholding Agency; (State Rte. 58)
Comments: Accessibility/usage subjected to Federal state, & local laws including but

not limited to historic preservation, floodplains, wetlands, endangered species, Nat'l EPA; contact GSA for more information.

Parcels ED–13, 3A, 16
Portions of D–8 & ED–4
N. Side of Oak Ridge Turnpike (State Rte. 58)
Oak Ridge TN 37763
Landholding Agency: GSA
Property Number: 54201530001
Status: Surplus
GSA Number: 4–B–TN–0664–AF
Directions: Energy: Landholding Agency; GSA: Disposal Agency
Comments: 168 +/− acres; legal constraints: ingress/egress utility easement; groundwater constraints; contact GSA for more information.

Self-Sufficiency Parcel 13
Anderson County
Oak Ridge TN 37830
Landholding Agency: GSA
Property Number: 54201620005
Status: Surplus
GSA Number: 4–B–TN–0664–AH
Directions: Landholding Agency: Energy; Disposal Agency: GSA
Comments: 20 acres; 2 sink-holes with eroded wet weather conveyance draining to them; contact GSA for more information.

Washington

Paine Field
Everett Facility Section 27
Everett WA
Landholding Agency: GSA
Property Number: 54201610012
Status: Excess
GSA Number: 9–U–WA–1284
Directions: Landholding Agency: FAA; disposal Agency: GSA
Comments: 0.54 acres; used as Outer Maker facility for aircraft approaches; contact GSA for more information.

West Virginia

Former AL1–RCLR Tower Site
2146 Orleans Rd.,
Great Cacapon WV 25422
Landholding Agency: GSA
Property Number: 54201530002
Status: Surplus
GSA Number: 4–U–WV–0561AA
Directions: Direction: Disposal Agency: GSA? Land Holding Agency: Federal Aviation Administration
Comments: 9.69 acres; located on ridgetop.

Wisconsin

TACAN Annex
6400 Block of Lake Rd.
Windsor WI 53598
Landholding Agency: GSA
Property Number: 54201320005
Status: Excess
GSA Number: 1–D–WI–611
Comments: 1 acre; moderate conditions.

[FR Doc. 2016–21470 Filed 9–8–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N148; 40120–1112–0000–F2]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below by October 11, 2016.

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Karen Marlowe, Acting Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Acting 10(a)(1)(A) Permit Coordinator, telephone 205–726–2667; facsimile 205–726–2479.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**) or send them via electronic mail (email) to *permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES**).

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Applications

Permit Application Number: TE 02165C–0

Applicant: I. Jack Stout, Winter Springs, FL

The applicant requests a permit to take (capture, handle, tag, collect tissue, and release) Anastasia Island (*Peromyscus polionotus phasma*) and southeastern beach mice (*P. p. niveiventris*) in Florida for presence/absence surveys and genetic analyses.

Permit Application Number: TE 089075–4

Applicant: Donna M. Oddy, Kennedy Space Center, FL

The applicant requests renewal of her permit to continue to take (capture, hold, identify, tag, collect tissue and hair samples, use fluorescent tracking powder, radio-tag, release, and translocate) the Perdido Key (*Peromyscus polionotus trissyllepsis*), St. Andrews (*P. p. peninsularis*), Choctawhatchee (*P. p. allophrys*), Southeastern (*P. p. niveiventris*), Anastasia Island (*P. p. phasma*), and Alabama beach mouse (*P. p. ammobates*) and amend her permit to include authorization to conduct permitted activities in Alabama as well as Florida.

Permit Application Number: TE 049502–7

Applicant: Carola A. Haas, Blacksburg, VA

The applicant requests renewal of her permit to continue to take (capture, measure, weigh, temporararily hold, and release) reticulated flatwoods salamander (*Ambystoma bishopi*) and frosted flatwoods salamander (*Ambystoma cingulatum*) and amend her permit to add authorization to take (capture, handle, take scale clips, release, and salvage shed skins) of Eastern indigo snake (*Drymarchon corais couperi*) and take tail clips of larval reticulated flatwoods and frosted salamanders for presence/absence surveys and genetic analyses.

Permit Application Number: TE 02166C–0

Applicant: Zoe D. Bryant, Tabernacle, NJ

The applicant requests a permit to take (enter hibernacula and maternity roost caves, capture with mist nets and harp traps, salvage, handle, measure, take hair samples, swab, wing-punch, band, and radio-tag) Indiana bats (*Myotis sodalis*) and northern long-eared bats (*Myotis septentrionalis*) in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Wisconsin, and Wyoming for presence/absence surveys and white-nose syndrome surveillance.

Permit Application Number: TE 02167C–0

Applicant: James W. Gore, Paragould, AR

The applicant requests a permit to take (enter hibernacula and maternity roost caves, capture with mist nets and harp traps, handle, measure, salvage, collect hair samples, swab, wing-punch, band, and radio-tag) gray bats (*Myotis grisescens*), Indiana bats (*Myotis sodalis*), northern long-eared bats (*Myotis septentrionalis*), and Ozark big-eared bats (*Corynorhinus* (*=Plecotus*) *townsendii ingens*) throughout the species' ranges for presence/absence surveys and white-nose syndrome surveillance.

Permit Application Number: TE 130300–5

Applicant: Paul D. Johnson, Alabama Aquatic Biodiversity Center, Marion, AL

The applicant requests renewal of his permit to continue to take (collect, transport, hold in captivity for more than 45 consecutive days, release, translocate, and euthanize) endangered species of freshwater mussels, gastropods, and fish for presence/absence surveys, captive propagation, reintroduction, and scientific research purposes in Alabama, Georgia, Mississippi, and Tennessee.

Permit Application Number: TE 03305C–0

Applicant: U.S. Army Corps of Engineers, Memphis, TN

The applicant requests amendment of their permit (formerly TE 061069–2) to add authorization to take (capture, identify, hold temporarily, and release) the Alabama (=inflated) heelsplitter (*Potamilus inflatus*) and southern clubshell (*Pleurobema decisum*) for presence/absence surveys in Alabama, and continue those same activities with the following freshwater mussels in Arkansas, Kentucky, and Mississippi: Pink mucket (*Lampsilis abrupta*), fat pocketbook (*Potamilus capax*), turgid-blossom (*Epioblasma turgidula*), ring-pink (*Obovaria retusa*), and orange-footed (*Plethobasus cooperianus*).

Permit Application Number: TE 183402–1

Applicant: U.S. Army, Fort Jackson, SC

The applicant requests renewal of their permit to continue to collect seeds (remove and reduce to possession) of the smooth coneflower (*Echinacea laevigata*) on Fort Jackson Military Reservation and sow the seeds in adjacent areas to expand and increase existing populations.

Permit Application Number: TE 087194–4

Applicant: Goethe State Forest, Dunellon, FL

The applicant requests renewal of their permit to continue to take (construct and monitor artificial nest cavities and restrictors, capture, band, translocate) red-cockaded woodpeckers (*Picoides borealis*) in Goethe State Forest and other State forest lands in Florida for population management and monitoring purposes.

Permit Application Number: TE 812344–6

Applicant: Pennington and Associates, Inc., Cookeville, TN

The applicant requests renewal of their permit to continue to take (capture, identify, release) the Nashville crayfish (*Orconectes shoupi*), Anthony's riversnail (*Athearnia anthonyi*), Royal marstonia (*Pyrgulopsis ogmorhaphe*), and several species of endangered and threatened fish and take (capture, identify, release, and salvage relic shells) several species of freshwater mussels in Alabama, Georgia, Kentucky, North Carolina, Tennessee, and Virginia for presence/absence surveys.

Dated: September 2, 2016.

Leopoldo Miranda,

Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2016–21702 Filed 9–8–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–16–1020–JA–VEIS]

Notice of Availability of the Record of Decision for the Final Programmatic Environmental Impact Statement for Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in 17 Western States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) hereby gives notice that the Record of Decision is available for the Final National Programmatic Environmental Impact Statement (Final EIS) on vegetation treatments involving the use of aminopyralid, fluroxypyr, and rimsulfuron herbicides on public lands administered by the BLM in 17 western states, including Alaska.

ADDRESSES: Copies of the Record of Decision are available in hard copy or CD upon request at the BLM Washington Office, 20 M Street SE., Room 2134, Washington, DC 20003, or at BLM State, District, and Field Office public rooms, or you can review or download the document from the BLM public Web site: *http://blm.gov/3vkd*.

FOR FURTHER INFORMATION CONTACT: Gina Ramos, Senior Weeds Specialist, telephone 202–912–7226 or Kim Anderson, Project Manager, telephone 206–438–2337. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Final EIS provides a comprehensive analysis of BLM's use of chemical herbicides in its various vegetation treatment programs related to hazardous fuels reduction, noxious weeds, invasive terrestrial and aquatic plant species management, resource rehabilitation following catastrophic fires, and other disturbances. The BLM served as the lead Federal agency for the preparation of the Final EIS. Alternative B in the Final EIS identifies three herbicides selected for use: Aminopyralid, fluroxypyr, and rimsulfuron. The Record of Decision identifies best management practices, standard operating procedures, and mitigation measures for all vegetation treatment projects involving the use of aminopyralid, fluroxypyr, and rimsulfuron.

The Final EIS addresses human health and ecological risk for the use of chemical herbicides on public lands and provides a cumulative impact analysis of the use of chemical herbicides in conjunction with other treatment methods.

The decision area includes surface estate public lands administered by 11 BLM State offices: Alaska, Arizona, California, Colorado, Idaho, Montana (North Dakota/South Dakota), New Mexico (Oklahoma/Texas/Nebraska), Nevada, Oregon (Washington), Utah, and Wyoming.

The BLM issued a Notice of Availability of the Draft Programmatic Environmental Impact Statement Using Aminopyralid, Fluroxypyr, and Rimsulfuron (Draft EIS) on June 19, 2015 (80 FR 35394).

The BLM responded to 98 individual public comments during the Draft EIS public review period.

Comment responses and subsequent changes to the impact analysis are documented in the Final EIS. In addition, the FEIS contains Subsistence analysis required under Section 801(a) of the Alaska National Interest Lands Conservation Act (ANILCA).

Authority: 40 CFR 1506.6, 40 CFR 1606.10.

Kit Muller,

Acting Assistant Director, Resources and Planning, Bureau of Land Management.

[FR Doc. 2016–21446 Filed 9–8–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15XL LLIDI02000 L71220000.EO0000–LVTFDX508400 241A 4500080287]

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability of Final Environmental Impact Statement for the Proposed Rasmussen Valley Phosphate Mine, Caribou County, Idaho

AGENCY: Bureau of Land Management, Interior, United States Forest Service, Agriculture.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) and the U.S. Department of Agriculture, Forest Service (USFS), Caribou-Targhee National Forest (CTNF), have prepared a Final Environmental Impact Statement (EIS) for the proposed Rasmussen Valley Phosphate Mine, and by this Notice are announcing the opening of the review and availability of the document. A Draft USFS Record of Decision (ROD) is also available for review and objection as described in the Summary section.

DATES: The BLM and USFS will issue coordinated RODs for this project. The Final EIS is now available for public review, as is the Draft USFS ROD. The BLM ROD will be released and announced separately, no sooner than the end of the Final EIS availability period on October 11, 2016. A legal notice published in the newspaper of record of the Final USFS ROD will be released no sooner than five business days following the end of the 45 day objection period after the Draft USFS ROD has been announced and made available.

ADDRESSES: CD–ROM and print copies of the Rasmussen Valley Mine Final EIS and the Draft USFS ROD are available in the BLM Pocatello Field Office at the following address: 4350 Cliffs Drive, Pocatello, ID 83204. In addition, an electronic copy of the Final EIS is available online at BLM Planning and NEPA Register: *http://on.doi.gov/1GpGxyW* and an electronic copy of the Final EIS and the Draft USFS ROD are available online at CTNF Current and Recent Projects: *http://www.fs.usda.gov/projects/ctnf/landmanagement/projects.*

FOR FURTHER INFORMATION CONTACT: William (Bill) Volk, Bureau of Land Management, Pocatello Field Office, 4350 Cliffs Drive, Pocatello, ID 83204, telephone 208–236–7503, fax 208–478–6376. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Nu-West Industries, Inc., doing business as Agrium Conda Phosphate Operations (Agrium), has submitted a mine and reclamation plan for the Rasmussen Valley Mine to exercise their contractual rights to recover phosphate ore reserves contained within Federal Phosphate Lease I–05975 (the Lease). The mine would be located in Caribou County approximately 18 miles northeast of Soda Springs, Idaho, on the southwestern flank of Rasmussen Ridge and adjacent to Rasmussen Valley near the headwaters of the Blackfoot River.

Agrium proposes to develop the Rasmussen Valley Mine within the Lease on a combination of BLM-managed lands managed by the Pocatello Field Office, National Forest System (NFS) lands administered by the Soda Springs Ranger District, the Blackfoot River Wildlife Management Area (WMA) administered by the Idaho Department of Fish and Game (IDFG), and on split estate lands (private land with Federal minerals). The Lease grants the lessee, Agrium, exclusive rights to mine and otherwise dispose of the federally-owned phosphate deposit. The proposed Rasmussen Valley Mine would also include some development outside the Lease on private lands, NFS lands, WMA lands, and on State lands administered by the Idaho Department of Lands (IDL). Agrium has also requested lease modifications in three locations to accommodate recovering phosphate outside the existing Lease area, or to accommodate disposal of mine waste on NFS lands.

The BLM, as the Federal Lease administrator, is the lead agency for the Final EIS. The USFS is the joint-lead agency, and the Idaho Department of Environmental Quality and the U.S. Army Corps of Engineers are cooperating agencies. The IDL, IDFG, Idaho Department of Water Resources, and U.S. Fish and Wildlife Service have also participated in the preparation of the Final EIS. The Final EIS provides the analysis upon which the BLM, USFS, and other involved agencies will base their decisions regarding the proposed Rasmussen Valley Mine.

In accordance with the Mineral Leasing Act of 1920, as amended, and NEPA, the BLM will evaluate the information in the Final EIS and respond to Agrium's mine and reclamation plan, review the impacts of the alternatives to the Proposed Action, including the No Action Alternative, and will issue decisions related to the development of the Lease and the proposed lease modifications. The USFS will make recommendations to the BLM concerning surface management and mitigation on leased lands within the CTNF and will make separate but coordinated decisions on special use authorizations for off-lease activities within the CTNF.

Approval of the Proposed Action would constitute both agencies' approval of Agrium's Juanuary 2011 mine and reclamation plan and proposed lease modifications. Under the Proposed Action, Agrium would disturb approximately 468 acres using open pit mining methods in phases (panels), allowing concurrent backfilling and reclamation of previously mined panels; construct permanent and temporary external overburden and ore piles, topsoil and growth media stockpiles; construct haul roads and realign portions of nearby county roads; and construct power lines, a staging and fuel storage area, water supply wells, and runoff sediment control structures. In addition, Agrium would shape pit backfill and external overburden piles to reduce the risk of ponded water on or in the pit; place a cover system over the backfill and select overburden to reduce the risk of deep percolation of water; leave high wall exposures in portions of the backfilled pit; and extend the pit and associated backfill beyond the Lease boundary in several locations, requiring enlargement of the Lease by lease modification. Phosphate ore would be hauled to Agrium's existing Wooley Valley Tipple, where it would be placed on rail cars and shipped by existing rail to Agrium's Conda Phosphate Operation (CPO) Fertilizer Plant approximately 12 miles to the southwest.

A Notice of Intent (NOI) to prepare this EIS was published in the **Federal Register** on March 1, 2011, which initiated a 30-day public scoping period for the Proposed Action. During public and internal scoping, issues and concerns were expressed that included impacts to wetlands; impacts to surface water and groundwater potentially resulting from releases of selenium and other contaminants of potential concern (COPCs) from waste rock; physical stability of proposed external overburden piles; management of pit water; impacts to wildlife and associated wildlife habitat, especially on the WMA; and maximizing phosphate resource recovery.

To address these issues and concerns, the agencies considered several alternatives to the Proposed Action. From these alternatives, Agrium proposed a combined set of alternatives to form Alternative One, called the Rasmussen Collaborative Alternative (RCA). In the Final EIS, the RCA is the agencies' preferred alternative and would disturb approximately 548 acres. Under the RCA, wetlands issues would be addressed by relocating the haul road, pit ramps and county road, and positioning borrow areas to avoid all wetlands. The potential for selenium and other COPCs to impact shallow groundwater and connected surface water would be avoided by eliminating the three external overburden piles from the mine plan. To accomplish this, overburden would be placed as backfill in the existing open pit at the Monsanto Company's wholly owned subsidiary, P4 Production, LLC's (P4), nearby South Rasmussen Mine. Eliminating the three external overburden piles would also alleviate concerns for the stability of these piles. Water management needs would be greatly reduced by not excavating the pit below the water table. Impacts to regional groundwater from COPCs would be reduced by proposing a more protective earthen cover over the backfill and overburden than the cover system proposed in the Proposed Action. The RCA cover system would use select alluvium and soil, available from a nearby borrow area, to reduce the amount of precipitation that percolates through the backfill and overburden. The RCA would also extend the pit toward the north to maximize phosphate resource recovery.

Under the RCA, the proposed lease modifications would be revised to accommodate backfill and external overburden piles on NFS land outside of the current Lease boundaries. Off-lease borrow areas on NFS lands would require a mineral materials permit from the USFS. Other off-lease activities on NFS land would require USFS Special Use Authorizations. RCA activities on State land, including pit backfill and haul roads on P4's South Rasmussen Mine, would require a modification to the currently approved mine plan for P4's State lease. A modification to the currently approved mine plan for P4's South Rasmussen Mine Federal fringe lease (IDI–023868) would also be required for RCA activities that would backfill a portion of that mine pit.

The RCA proposes various mitigation measures to avoid, minimize and/or compensate for mine impacts to all resources. The RCA would avoid impacts that may be associated with the Proposed Action where possible. For example, under the RCA, surface water impacts from mine waste leachates would be avoided by eliminating certain waste piles. Also, the main haul road would be relocated to totally avoid wetlands. The RCA would also minimize other impacts to the extent practicable such as applying a more protective cover on mine waste to reduce the amount of leachate reaching groundwater to a level allowable by the Idaho Department of Environmental Quality. Some impacts such as conversion of visual resources from upland range or aspen to bare pit wall cannot be fully mitigated, but would be minimized to the extent practicable by backfilling mine pits with all of the overburden generated by mining. Impacts to wildlife habitat would be minimized on-site by using more robust reclamation including a reclamation seed mix with native species to provide more vegetation diversity for wildlife forage.

The residual impacts to wildlife habitat for the proposed Rasmussen Valley Mine were quantified using a Habitat Equivalency Analysis (HEA) methodology. The HEA quantifies the baseline wildlife habitat and predicts the permanent and interim losses and gains of wildlife habitat that would result from the mining activity and reclamation. Agrium has proposed to use the quantitative results of the HEA in the determination of a monetary fee that they will contribute to a third party, such as a State natural resource management agency, foundation, or other appropriate organization, to implement wildlife habitat mitigation projects in the regional watershed, to achieve, at a minimum, no net loss to the services, functions, and values of the original habitat.

A Draft EIS was prepared and a notice of availability published in the **Federal Register** on September 18, 2015, initiating a 45-day public comment period. The Draft EIS considered several alternative components. Besides the Proposed Action, the RCA and the No Action Alternative were carried forward for full analysis in the Final EIS. Agencies, organizations, and interested parties provided comments on the Draft EIS via mail, email, and public meetings.

In developing responses to these comments, revisions were made to the RCA in the Final EIS to minimize impacts to non-Federal lands and groundwater impacts at P4's South Rasmussen Mine. These revisions include the addition of off-lease borrow areas on NFS lands to potentially minimize the borrow area on the WMA, and using select borrow material to improve the earthen cover on the RCA pit backfill at the South Rasmussen Mine.

Under the No Action Alternative, the Rasmussen Valley Mine would not be approved for mining, and no associated development would occur on the existing Lease at this time. Similarly, associated requests such as the lease modification applications would not be approved. The No Action Alternative would not provide ore for the CPO and would leave the mineral resource unmined. However, the No Action Alternative does not preclude application and approval of future mine and reclamation plans for the site because of pre-existing mining rights granted in the existing Lease.

The USFS's decision concerning that portion of the proposed project related to Special Use Authorizations for off-lease activities is subject to the objection process pursuant to 36 CFR 218 Subparts A and B. Instructions for filing objections will be provided in the legal notice published in the newspaper of record for the Draft USFS ROD. Objections will be accepted only from those who have previously submitted specific written comments regarding the proposed project, either during scoping or other designated opportunities for public comment, in accordance with 36 CFR 218.5(a). Issues raised in objections must be based on previously submitted, timely, and specific written comments regarding the proposed project, unless based on new information arising after designated opportunities.

The BLM will not issue a draft ROD for the project but will release a ROD in the future, based on the Final EIS and any considerations the public may communicate regarding this proposal during the "availability period" previously described. The BLM's decision regarding the mine and reclamation plan and lease modifications will be subject to appeal under procedures found in 43 CFR part 4, with explanation and opportunity to be provided in the forthcoming ROD.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508; 43 CFR part 46; 43 U.S.C. 1701; and 43 CFR part 3590.

Mary D'Aversa,

District Manager, Idaho Falls District, Bureau of Land Management.

Garth Smelser,

Forest Supervisor, Caribou-Targhee National Forest, U.S. Forest Service.

[FR Doc. 2016–21772 Filed 9–8–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYRO5000. L16100000. DX0000]

Notice of Proposed Supplementary Rules for Travel Management Limitations on Public Lands in Fremont County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules for public lands included in the Lander Approved Resource Management Plan and Record of Decision (Lander RMP) dated June 26, 2014. The proposed rules would implement decisions found in the Lander RMP relating to the use of motorized and non-motorized vehicles.

DATES: Comments on the proposed supplementary rules must be received or postmarked by November 8, 2016 to be assured of consideration. Comments received, postmarked, or electronically dated after that date will not necessarily be considered in the development of final supplementary rules.

ADDRESSES: Please mail or hand deliver all comments concerning the proposed supplementary rules to Kristin Yannone, Planner, BLM Lander Field Office, 1335 Main Street, Lander, WY 82520.

FOR FURTHER INFORMATION CONTACT:

- Visit *www.blm.gov/wy/st/en/field_offices/Lander/implementation.html;*
- Send an email to *blm_wy_lrmp_wymail@blm.gov;* or
- Contact Kristin Yannone, Planner, either by mail at the BLM Lander Field Office, 1335 Main Street, Lander, WY 82520 or by phone at 307–332–8400.

Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 800–877–8339 to contact Ms. Yannone. The FIRS is available 24 hours a day, seven days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The public is invited to provide comments on these proposed supplementary rules. See **DATES** and **ADDRESSES** for information on submitting comments. Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules and explain the reason for any recommended change. Comments requesting changes to decisions in the Lander RMP are outside the scope of this rulemaking.

Where possible, comments should reference a specific provision of these proposed supplementary rules. The BLM need not consider or include in the administrative record: (a) Comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than that listed above (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the BLM Lander Field Office during regular business hours, Monday through Friday, except Federal holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Background

The BLM establishes supplementary rules under the authority of 43 CFR 8365.1–6, which allows the BLM State Directors to establish such rules for the protection of persons, property, and public lands and resources. This regulation allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations.

Discussion of the Supplementary Rules

The Lander RMP identified areas as closed to motorized and/or mechanized travel and areas limited to designated routes and seasonal travel. The Lander RMP process included a **Federal Register** Notice of Intent to Prepare an Environmental Impact Statement and Land Use Plan Amendment dated February 13, 2007 (72 FR 6740), a

Notice of Availability of the Draft Environmental Impact Statement dated September 9, 2011 (76 FR 55939), and a Notice of Availability of the Final Environmental Impact Statement dated February 22, 2013 (78 FR 12347). All of these documents are available at: *http://www.blm.gov/wy/st/en/programs/Planning/rmps/lander/docs.html.*

The proposed supplementary rules are consistent with the decision record for the Lander RMP. These proposed supplementary rules would assist in the BLM's implementation of the Lander RMP's travel management decisions by restricting travel activities in the manner and areas identified in the Lander RMP. They would prohibit travel, and operation or possession of a mechanized or motorized vehicle, in areas designated as closed in the Lander RMP. Exemptions from the proposed supplementary rules would include vehicles used for handicapped accessibility, vehicles used by disabled hunters and their companions possessing the pertinent State permit, and areas with limited travel designations.

Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rules would not have an annual effect of $100 million or more on the economy. They are not intended to affect commercial activity. For public safety and resource protection reasons, they merely impose rules on travel in a limited area of public lands. The supplementary rules would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal Governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor do they raise novel legal or policy issues. They merely protect public safety and the environment.

Clarity of the Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you may have on the clarity of the proposed supplementary rules to one of the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

As documented in the Record of Decision for the Lander RMP, the Lander RMP process included opportunities for public comment in a **Federal Register** Notice of Intent to Prepare an Environmental Impact Statement and Land Use Plan Amendment dated February 13, 2007 (72 FR 6740), a Notice of Availability of the Draft Environmental Impact Statement dated September 9, 2011 (76 FR 55939), and a Notice of Availability of the Final Environmental Impact Statement dated February 22, 2013 (78 FR 12347). All of these documents are available at: *http://www.blm.gov/wy/st/en/programs/Planning/rmps/lander/docs.html.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to travel on specific public lands. Therefore, the BLM has determined under the RFA that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). The proposed supplementary rules merely contain rules of conduct for travel on or across certain public lands. The proposed supplementary rules would not affect business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

The proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal Governments in the aggregate, or the private sector, of more than $100 million per year; nor would they have a significant or unique effect on small governments. These proposed supplementary rules do not require anything of State, local, or tribal Governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules are not a Government action capable of interfering with constitutionally protected property rights. The proposed supplementary rules do not address property rights in any form and do not cause the impairment of anybody's property rights. Therefore, the BLM has determined that these proposed supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of Government. The proposed supplementary rules apply on a limited area of land in only one State, Wyoming. Therefore, the BLM has determined that the proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that the proposed supplementary rules would not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. The proposed supplementary rules would merely regulate travel on or across certain public lands to protect public safety and the environment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these proposed supplementary rules do not include policies that have tribal implications. The proposed supplementary rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. The supplementary rules would not have an adverse effect on energy supplies, production, or consumption. They only address travel on or across certain public lands to protect public safety and the environment, and have no connection with energy policy.

Author

The principal author of the proposed supplementary rules is Kristin Yannone, Planner, at the BLM Lander Field Office,

For the reasons stated in the preamble, and under the authority for supplementary rules at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the Wyoming Acting State Director, Bureau of Land Management, proposes to issue these supplementary rules for public lands managed by the BLM Field Office in Lander, Wyoming, to read as follows:

Supplementary Rules

Definitions

Area designated as closed means an area in which travel or a type of travel is prohibited year-round.

Designated travel routes means roads and trails open to specified modes of travel and identified on: (1) A BLM sign or (2) a map of designated roads and trails that is maintained and available for public inspection at the BLM Lander Field Office, Wyoming. Designated travel routes are open to public use in accordance with such limits and restrictions as are specified in the 2014 Lander RMP, in future decisions implementing the 2014 Lander RMP, or in these supplementary rules. This definition excludes any road or trail that is subject to BLM prohibitions that prevent use of the road or trail.

Mechanized vehicle means a mode of transportation, such as a bicycle, that is not powered by a motor.

Motorized vehicle means a motor- or engine-powered device, such as a car, truck, off-highway vehicle, motorcycle, or snowmobile, upon which a person or persons may ride on land.

Prohibited Acts

1. You must not operate or possess a mechanized or motorized vehicle in an area designated as closed by the 2014 Lander RMP and marked as such by a BLM sign or map.
2. You must not travel on or across BLM lands within the Lander Field Office designated as closed to all travel by the 2014 Lander RMP and marked as such by a BLM sign or map.
3. You must not operate or possess a mechanized or motorized vehicle except within designated travel routes identified for such use by the 2014 Lander RMP or a subsequent travel management plan implementing the 2014 Lander RMP, and as marked by a BLM sign or map.

Exemptions

These supplementary rules do not apply to:

- Emergency, law enforcement, and Federal or other government vehicles while being used for official or emergency purposes, or to any other vehicle that is expressly authorized or otherwise officially approved by the BLM;
- Areas, as identified on a BLM sign or map, with limited travel designations, including but not limited to: The time or season of travel, numbers or types of conveyances, permits or licenses, use of existing roads and trails, and use of designated roads and trails;
- Motorized or non-motorized wheelchairs or other types of equipment used for handicapped accessibility; and
- Motorized or mechanized vehicles used by individuals possessing a valid disabled-hunter permit or disabled-hunter companion permit from the Wyoming Game and Fish Department in all areas except those closed to motorized travel.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8305.1–7, State or local officials may also impose penalties for violations of Wyoming law.

Mary Jo Rugwell,

Bureau of Land Management, Wyoming State Director.

[FR Doc. 2016–21777 Filed 9–8–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0052]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection Applicant Information Form (1–783)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 8, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (facsimile: 304–625–5093).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Applicant Information Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1–783.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. This collection is necessary for individuals to request a copy of their personal identification record to review it or to obtain a change, correction, or an update to the record.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Annually, the FBI receives 275,000 identification requests, therefore there are 275,000 respondents. The form requires 3 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 13,750 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: September 6, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–21694 Filed 9–8–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act and the Oil Pollution Act

On July 20, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Michigan in the lawsuit entitled *United States* v. *Enbridge Energy, Limited Partnership, et al.,* Civil Action No. 1:16–cv–914. The United States published a notice advising the public of an opportunity to submit public comments on the proposed settlement during a 30-day period. 81 FR 142 (July 25, 2016). During the public comment period, several commenters requested extension of the comment period. The United States is extending the comment period through October 21, 2016 to allow time for interested persons to submit additional or supplemental comments on the proposed Consent Decree.

The Complaint in this action asserts claims against Enbridge Energy, Limited Partnership and eight related Enbridge entities ("Enbridge") arising from two separate oil transmission pipeline failures that resulted in discharges of oil to waters of the United States and adjoining shorelines. One of these pipeline failures occurred on July 25, 2010 near Marshall, Michigan on a pipeline known as Line 6B, and resulted in discharges of oil to Talmadge Creek, a large stretch the Kalamazoo River, and adjoining shorelines. The other pipeline failure occurred on or about September 9, 2010 in Romeoville, Illinois on a pipeline known as Line 6A, and resulted in discharges of oil primarily to an unnamed tributary to the Des Plaines River, a retention pond, and adjoining shorelines. The proposed Complaint seeks injunctive relief and civil penalties under Sections 309 and 311 of the Clean Water Act, as amended, 33 U.S.C. 1319 and 1321, for both the Marshall, Michigan and the Romeoville, Illinois oil spills. In addition, under Section 1002 of the Oil Pollution Act, as amended, 33 U.S.C. 2702, the Complaint seeks to recover from Defendants all unreimbursed removal costs incurred and to be incurred by the United States in connection with the Marshall, Michigan oil spill.

Under the proposed Consent Decree, Enbridge will pay a civil penalty of $61 million for the Marshall, Michigan oil spill, and an additional $1 million for the Romeoville, Illinois oil spill. In addition, Enbridge will pay over $5.4 million in unreimbursed federal removal costs that the Oil Spill Liability Trust Fund ("Fund") paid in connection with the Marshall, Michigan oil spill through October 1, 2015, and Enbridge will pay all additional removal costs consistent with the National Contingency Plan that are paid by the Fund after October 1, 2015 in connection with the Marshall, Michigan oil spill. Prior to the Consent Decree, the United States billed Enbridge for additional federal removal costs incurred in connection with both the Marshall, Michigan oil spill and the Romeoville, Illinois oil spill, and Enbridge paid all amounts billed for that spill. Finally, the proposed Consent Decree includes an extensive program of injunctive relief, including a series of measures designed to (1) reduce the potential for future pipeline failures that could result in unlawful discharges from Enbridge's Lakehead System pipelines, (2) improve leak detection capabilities and Enbridge's response to situations that could indicate potential pipeline failures, and (3) improve Enbridge's emergency response and preparedness capabilities to better address any future spills that might occur.

The publication of this notice extends the period for public comment on the proposed Consent Decree through October 21, 2016. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Enbridge Energy, Limited Partnership, et al.,* D.J. Ref. No. 90–5–1–1–10099. All comments must be submitted no later than October 21, 2016. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

You may request a paper copy of the Consent Decree with or without Appendices. If requesting a copy of the proposed Consent Decree with Appendices, please enclose a check or money order for $52.25 (25 cents per page reproduction cost) payable to the United States Treasury, for a copy of the Consent Decree with Appendices. If requesting a copy of the proposed Consent Decree without Appendices, please enclose a check or money order for $42.25 payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–21693 Filed 9–8–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Special Employment Under the Fair Labor Standards Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) revision titled, "Special Employment Under the Fair Labor Standards Act," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 11, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201510-1235-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Special Employment Under the Fair Labor Standards Act (FLSA) information collection. FLSA special employment provisions relate to restrictions on industrial homework and to the use of special certificates that allow for the employment of categories of workers who may be paid less than the statutory minimum wage to the extent necessary to prevent curtailment of their employment opportunities. This information collection has been classified as a revision, because of changes to Forms WH–226 and WH–226A that relate to the authorization to pay subminimum wages to workers with disabilities. The changes will allow the WHD more effectively and efficiently to fulfill its statutory directive to oversee and enforce the FLSA section 14(c) certificate program, including the new conditions introduced to section 14(c) certificate holders pursuant to the Workforce Innovation and Opportunity Act. FLSA sections 11 and 14 authorize this information collection. *See* 29 U.S.C. 211, 214.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0001. The current approval is scheduled to expire on May 31, 2017; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 6, 2015 (80 FR 47004).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Special Employment Under the Fair Labor Standards Act.

OMB Control Number: 1235–0001.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 338,107.

Total Estimated Number of Responses: 1,345,307.

Total Estimated Annual Time Burden: 693,807 hours.

Total Estimated Annual Other Costs Burden: $3,498.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 2, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–21723 Filed 9–8–16; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–050]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA gives public notice that it has submitted to OMB for approval the information collection described in this notice. We invite you to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: OMB must receive written comments at the address below on or before October 11, 2016.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503; fax to 202–395–5167; or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm by phone at 301–837–1694 or by fax at 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on June 21, 2016 (81 FR 40353); we received no comments. We have therefore submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collection and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether the collection affects small businesses. In this notice, NARA solicits comments concerning the following information collection:

Title: Consent to Make Inquiries and Release of Information and Records.

OMB number: 3095–0068.

Agency Form Number: NA Form 10003.

Type of Review: Regular.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 400.

Estimated Time per Response: 2 minutes.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 13 hours.

Abstract: In order to fulfill its Government-wide statutory mission, OGIS provides varying types of assistance to its customers, which requires communicating with Government departments and agencies regarding the customer's FOIA/Privacy Act request/appeal. Under the Privacy Act, the agencies may not share peoples' personal information without either a routine use that they inform people of prior to gathering the information, or permission from the involved person. As a result, OGIS uses NA Form 10003 to collect that authorization and the identifying information necessary for the agency to identify the correct files so that OGIS may provide the requested assistance. Without the information submitted in NA Form 10003, OGIS would be unable to fulfill its mission or provide assistance to requesters. Requesters use the NA Form 10003, OGIS Consent to Make Inquiries and Release of Information and Records, to (1) request that OGIS make inquiries on their behalf and (2) authorize agencies to release records and information related to their FOIA and Privacy Act requests and appeals so that OGIS can assist in resolving the dispute or in providing information to the requester. The authority for this information collection is prescribed by 5 U.S.C. 552a(b), and as interpreted by *Taylor* v. *Orr,* No. 83–0389, 1983 U.S. Dist. LEXIS 20334, at *6 n.6 (D.D.C. Dec. 5, 1983.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2016–21691 Filed 9–8–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–049]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by October 11, 2016. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at

Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0007, 2 items, 2 temporary items). Records related to state and county offices, including annual reports, publications, and meeting minutes.

2. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0012, 8 items, 8 temporary items). Records related to marketing quota and acreage allotment programs.

3. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0014, 9 items, 9 temporary items). Records related to eligible producers participating in farm service and commodity credit programs.

4. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0015, 2 items, 2 temporary items). Records related to claims filed against debtor producers.

5. Department of the Army, Agency-wide (DAA–AU–2014–0022, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to maintenance tool inventory.

6. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0009, 1 item, 1 temporary item). Documents relating to tracking the location, monitoring conditions, and retirement of weapons systems.

7. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0010, 1 item, 1 temporary item). Documents relating to monitoring the condition, tracking the location, and the retirement of weapons systems under specific military commands.

8. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0012, 1 item, 1 temporary item). Documents relating to monitoring the condition, status, and retirement of specific weapons systems.

9. Department of Energy, Agency-wide (DAA–0434–2016–0004, 1 item, 1 temporary item). Records relating to modified security screening processes and procedures for special needs personnel.

10. Department of Homeland Security, Immigration and Customs Enforcement (DAA–0567–2015–0009, 15 items, 15 temporary items). Employee training records including instructional materials, student records, administrative records, and related materials.

11. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0016, 8 items, 4 temporary items). Citizenship and naturalization forms and supporting documentation when rejected for incorrect fees or non-sufficient funds, when incomplete or missing signature(s), when abandoned, or when withdrawn. Proposed for permanent retention are all other citizenship and naturalization forms (approved, denied, terminated, and administratively closed).

12. Department of Transportation, Federal Railroad Administration (DAA–0399–2014–0004, 4 items, 4 temporary items). Records pertaining to mission-related training including course materials, training rosters, and reports.

13. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0002, 24 items, 24 temporary items). Records related to routine taxpayer dispute appeals including audit reports, case files, statistical reports, workflow management tracking data, case tracking database, and administrative materials.

14. Commodity Futures Trading Commission, Office of the Inspector General (DAA–0180–2016–0003, 6 items, 3 temporary items). Routine audit and investigation case files, and allegation files. Proposed for permanent retention are significant audit and investigation case files, and semi-annual reports to Congress.

15. National Archives and Records Administration, Government-wide (DAA–GRS–2016–0014, 5 items, 5 temporary items). Revised General Records Schedule for non-mission employee training records.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2016–21690 Filed 9–8–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Community Catalyst: The Roles of Libraries and Museums as Enablers of Community Vitality and Co-Creators of Positive Community Change—A National Leadership Grants Special Initiative

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Service ("IMLS") as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning The Role of Libraries and Museums as enablers of community vitality and co-creators of positive community change. (Community Catalyst)—A National Leadership Grants Special Initiative.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 7, 2016.

The IMLS is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: For a copy of the documents contact: Marvin Carr, STEM and Community Engagement Advisor, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024. Dr. Carr can be reached by telephone: 202–653–4752; fax: 202–653–4625; email: *mcarr@imls.gov* or by *teletype* (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning and civic engagement. We provide leadership through research, policy development, and grant making. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. (20 U.S.C. 9101 *et seq.*).

II. Current Actions

To administer Community Catalyst: The Roles of Libraries and Museums as Enablers of Community Vitality and Co-creators of Positive Community Change (Community Catalyst)—A National Leadership Grants Special Initiative. National Leadership Grants for Libraries (NLG-Libraries) and National Leadership Grants for Museums (NLG-Museums), under which this special initiative falls, support projects that address challenges faced by the library and museum fields and that have the potential to advance practice in those fields. Successful projects will generate results such as new tools, research findings, models, services, practices, or alliances that can be widely used, adapted, scaled, or replicated to extend the benefits of federal investment. This special joint NLG-Libraries and NLG-Museums initiative invites proposals for the development and testing of approaches to deepen and sustain the collaborative work that libraries and museums engage in with their communities. Funded projects will help to create foundations for enhanced collective impact in communities, especially working with those from diverse economic, social and cultural backgrounds and will involve key partners including community service organizations, government entities, community-focused businesses, and/or funders. The goal is to help build additional capacity in libraries and museums to become enablers of community vitality and co-creators of positive community change.

Agency: Institute of Museum and Library Services.

Title: Community Catalyst: The Roles of Libraries and Museums as Enablers of Community Vitality and Co-creators of Positive Community Change (Community Catalyst)—A National Leadership Grants Special Initiative.

OMB Number: TBD.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries, agencies, institutions of higher education, museums, and other entities that advance the museum and library fields and that meet the eligibility criteria.

Number of Respondents: 60.

Estimated Time per Respondent: 40 hours.

Total Burden Hours: 2,400.

Total Annualized cost to respondents: $68,088.80.

Total Annualized capital/startup costs: 0.

Total Annualized Cost to Federal Government: $11,695.35.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Stephanie Burwell, Chief Information Officer, Office of the Chief Information Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Mrs. Burwell can be reached by Telephone: 202–653–4684, Fax: 202–653–4625, or by email at *sburwell@imls.gov* or by *teletype* (TTY/TDD) at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

Dated: September 2, 2016.

Kim A. Miller,

Grants Management Specialist, Office of the Chief Financial Officer.

[FR Doc. 2016–21667 Filed 9–8–16; 8:45 am]

BILLING CODE 7036–01P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 11, 2016. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2017–013

1. *Applicant:* Dr. George Watters, Director, AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8901 La Jolla Shores Drive, La Jolla, CA 92037.

Activity for Which Permit Is Requested

Waste Management Permit. This permit application pertains to ship and shore-based research and logistic activities conducted by the National Oceanic and Atmospheric Administration's (NOAA) Antarctic Marine Living Resources (AMLR) Program. The AMLR Program conducts research from a vessel platform in the Antarctic Peninsula region, collecting environmental, oceanographic, primary productivity, finfish and prey data (zooplankton abundance and distribution, particularly Antarctic krill *Euphausia superba*). In addition, the applicant conducts krill-dependent, land-based predator investigations at two temporary field camps in the South Shetland Islands, Antarctica: Cape Shirreff and Copacabana.

Cape Shirreff is a temporary, multi-year field camp on Livingston Island, South Shetland Islands, Antarctica. During each year of the proposed permitting period (2016–2021), the field camp will typically be occupied for less than five months (≤150 days; normally around 120 days) during the austral spring/summers and will house 4–6 researchers. Semiannually for short durations only (usually less than two weeks), an additional group of two to four researchers may reside in a temporary tent structure; tent location will be setup to minimize impact on flora and fauna. In addition, the AMLR Program utilizes an all-terrain vehicle (ATV) that is stored at the Cape Shirreff field camp.

Copacabana field camp is located in Antarctic Specially Protected Area (ASPA) Number 8 (Western Shore of Admiralty Bay, King George Island, South Shetland Islands). The approximate coordinates of the camp are 62°10′ South latitude by 58° 28′ West longitude. The camp consists of four structures connected by walkways. All buildings and equipment are properly sealed and stored over the winters such that they are inaccessible to wildlife. The AMLR Program recognizes the status of Copacabana as an ASPA (No. 128) and adheres to all protection afforded as such. During the proposed permitting period (2016–2021), the field camp may be occupied for significantly shorter periods than historically, typically less than one month (≤30 days) during the austral summer of each year.

Research equipment deployed near both field will include a snow measurement gauge and remote, autonomous cameras and will be removed from the field at the conclusion of the work. The AMLR program will also continue their use of a vertical take-off and landing unmanned aerial vehicle (VTOL–UAV) for conducting census surveys of animal colonies. The VTOL–UAV that the applicant proposes to deploy has GPS capability and will fly missions up to 30 minutes at altitudes between 75 and 300 feet. The aircraft are operated by trained, experienced pilots and flight crews. Observers will be used to maintain visual line-of-sight with the UAV any time the aircraft is more than 300 m from the pilot. Appropriate safety measures will be in place and best practices for operating in polar environments will be employed.

Wastes and designated pollutants associated with typical field camp operations will be generated, released, stored, and removed. The field camps will release wastes to air in the form of emissions resulting from the combustion of gasoline, propane, and charcoal. Releases of wastes to water will be limited to greywater and human sewage only. Sewage is disposed of directly into the sea with appropriate mixing. Wastes and designated pollutants resulting from scientific research include materials used to mark animals (*e.g.* paints, dyes, tags) and doubly-labeled water used to measure energetics and body condition in fur seals. All radioisotope materials will be handled to minimize the risk of inadvertent release.

Releases associated with camp logistics and operations occur daily throughout the period of camp occupation. Releases resulting from research activities occur episodically throughout the field season. Other than the above releases, all other wastes will be packaged (or otherwise contained) and removed from the site for proper disposal under approved guidelines. As far as possible, removal via transfer to the AMLR research vessel will occur annually. Waste awaiting retrograde will be stored under cover (*e.g.,* in buildings, fish boxes, tents, or under tarps) to ensure that it is isolated from wildlife and is not scattered by wind.

Over the period 2017–2021, the AMLR Program plans to conduct three surveys including 30–90 days of vessel operations in the Antarctic Peninsula region annually during the austral summer. The vessel follows a standardized survey grid, and depending on the focus any given year, additional smaller sections of the region are surveyed. During the surveys, the Program deploys drifters and expendable bathythermographs (XBTs) and expendable conductivity-temperature and depth (XCTDS) probes to collect hydrographic data within the study area to better understand the relationship between the target species and their environment, and to help partner programs (NOAA Global Drifter Program) with deployment of their instruments. The applicant plan annual deployments up to 150 XBTs, 20 XCTDS and 55 drifters. The U.S. AMLR Program may deploy upwards of three mooring arrays which will release up to 6 ferrous weights (train wheels), at the recovery of the mooring(s). Each mooring weight set will weigh between 750 and 1500lbs, depending on the magnitude of the current speed in the vicinity of the mooring locations. These mooring weights will not be recovered. In addition to drifters and XBTs, the AMLR Program also deploys and recovers a variety of gears that are not intentionally released into the environment. These may include both oceanographic instruments and fishing gears, for example: Conductivity-temperature-depth profilers (CTD), plankton nets, commercial bottom trawls, continuous plankton records, winged optical particle counters, towed current profilers, and acoustic buoys.

Location

Cape Shirreff, Livingston Island; Copacabana, western shore of Admiralty Bay; Western Antarctic Peninsula

Dates: October 1, 2016–July 30, 2021.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–21669 Filed 9–8–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 11, 2016. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2017–012

Applicant: Dr. George Watters, Director, AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8901 La Jolla Shores Drive, La Jolla, CA 92037.

Activity for Which Permit Is Requested

Take, Harmful Interference, Enter Antarctic Specially Protected Areas, Import into USA. This permit application pertains to research activities conducted by the National Oceanic and Atmospheric Administration's (NOAA) Antarctic Marine Living Resources (AMLR) Program. The U.S. AMLR Program proposes to take pinniped species in the Antarctic Peninsula region, primarily at Cape Shirreff, Livingston Island, as part of a long-term ecosystem monitoring program established in 1986. Permission is requested to take Antarctic fur seals (*Arctocephalus gazelle;* 1203 adult/juvenile; 6005 pups), southern elephant seals (*Mirounga leonine;* 102 adult/juvenile; 102 pups), crabeater seals (*Lobodon carcinophaga;* census only), leopard seals (*Hydrurga leptonyx;* 202 adult/juvenile), Ross seals (*Ommatophoca rossii;* census only), and Weddell seals (*Leptonychotes weddellii;* 62 adult/juvenile; 42 pups) by harassment associated with life-history studies and surveys to census or estimate abundance and distribution of pinnipeds. Specific take activities include capture/handling/release of animals for studies of attendance behavior (radio transmitter (VHF)), diving (time-depth recorders; TDRs), at-sea foraging locations (platform terminal transmitter (PTT), geo-location light loggers (GLS), or global positioning system (GPS) instruments), energetics (doubly-labeled water studies using stable and or radio-isotopes), diet (including enema, milk collection for fatty acid signature analysis, or tissues for stable isotope analysis), age determination (post-canine tooth extraction), pathology (blood collection), and population dynamics (tagging). The U.S. AMLR Program does not plan any lethal take; however, accidental mortality as a direct result of the studies is possible and thus included as part of this application. All methods to be used in the conduct of the proposed studies have been used extensively by U.S. AMLR researchers and the marine mammal research community, generally. All studies of foraging ecology, population dynamics, mark-recapture, census, reproductive success and energetics are part of a long-term monitoring effort coordinated with other Antarctic treaty nations under the auspices of Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR).

The U.S. AMLR Program also proposes continue studies of the behavioral ecology and population biology of the Adélie, gentoo, and chinstrap penguins, as well as interactions among these species and their principal avian predators (skuas, gulls, sheathbills and giant petrels). These studies make use of permanent marks (including flipper banding, pit tagging, and genetic markers) to identify individuals and track them accurately over time. The applicant will continue to study penguins' foraging habits, involving the use of VHF, PTT, GPS, TDRs and GLS tags. These instruments may be deployed on adults of all species at any time during the breeding season and on chicks of all species during the fledging period. Another component of the foraging behavior studies will involve diet collections using the wet offloading technique. The applicant plans to stomach lavage adult penguins at each site. The applicant will also collect data on egg sizes and adult weights of each species and weigh and measure chicks at crèche age (ca. 21 days of age) and fledging for comparative annual growth indices in all species. In addition, penguin uropygial gland oil may be collected for contaminant studies and unhatched penguin eggs may be collected for lipid analysis. Empty egg shells and feathers (breast and tail) may also be collected for isotopic and genetic studies. Morphometric information to be recorded includes bill (culmen) depth and length and tarsus length. These measurements are usually taken during tag deployment, diet collection, or banding. The principal avian predators of the penguins (skuas, gulls, giant petrels and sheathbills) are also monitored and, when possible, adults and chicks will be banded, weighed and measured for behavioral and demographic studies. In addition, the applicant may census, band and measure cape petrels and blue-eyed shags. The applicant may collect samples of penguin and skua blood from adults of each species. The number of takes per annum of each avian species will be as follows: chinstrap penguin, 3320; Adelie penguin, 2880; Gentoo penguin, 3020; brown skua, 600; south polar skua, 600; giant petrel, 600; kelp gull, 100; blue-eyed shag, 150; snowy sheathbill, 45; cape petrel, 200. All sampling protocols involve techniques that are standard within the seabird community. Those protocols related to the CCAMLR Ecosystem Monitoring Program (CEMP) are described by CCAMLR.

The U.S. AMLR Program requests permission to conduct extensive studies at the Cape Shirreff and Copacabana research sites. Additionally, the Program anticipates conducting intermittent peninsula-wide pinniped and seabird surveys. As such, the applicant requests access to all ASPAs in the South Shetland Islands and in the Antarctic Peninsula. Entry to sites will be made via U.S. AMLR charter or NSF vessels, with immediate access via zodiac operations. Peninsula-wide pinniped and seabird surveys may include the use of unmanned aerial vehicles and photogrammetry. U.S. AMLR researchers will adhere to ASPA protections at all times and plan all activities to minimize disruption to flora and fauna. All species, pinniped and avian, are subject to harmful interference due to census (aerial or ground) and other work described in this application.

Location

Antarctic Peninsula region, South Shetland Islands vicinity: Cape Shirreff, Livingston Island; San Telmo Islands; Copacabana, western shore of Admiralty Bay; and Lions Rump, King George Island.

ASPA 108, Green Island, Berthelot Islands, Antarctic Peninsula
ASPA 112, Coppermine Peninsula, Robert Island
ASPA 113, Litchfield Island, Arthur Harbor, Palmer Archipelago
ASPA 125, Fildes Peninsula, King George Island, South Shetland Islands
ASPA 126, Byers Peninsula, Livingston Island, South Shetland Islands
ASPA 128, Western Shore of Admiralty Bay, King George Island
ASPA 132, Potter Peninsula, King George Island, South Shetland Islands
ASPA 133, Harmony Point, Nelson Island, South Shetland Island
ASPA 134, Cierva Point Offshore Islands, Danco Coast, Antarctic Peninsula
ASPA 139, Biscoe Point, Anvers Island
ASPA 140, Shores of Port Foster, Deception Island, South Shetland Islands
ASPA 144, Chile Bay
ASPA 145, Port Foster, Deception Island, South Shetland Islands
ASPA 146, South Bay, Doumer Island, Palmer Archipelago
ASPA 148, Mount Flora, Hope Bay, Antarctic Peninsula
ASPA 149, Cape Shirreff, Livingston Island, South Shetland Islands
ASPA 150, Ardley Island, Maxwell Bay, King George Island, South Shetland Islands
ASPA 151, Lions Rump, King George Island, South Shetland Islands
ASPA 152, Western Bransfield Strait, Antarctic Peninsula
ASPA 153, East Dallmann Bay, Antarctic Peninsula
ASPA 171, Narebski Point, Barton Peninsula, King George Island

Dates: October 1, 2016–July 30, 2021

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–21668 Filed 9–8–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 11, 2016. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2017–014

1. *Applicant:* Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas (ASPAs). The applicant plans to transit through three marine ASPAs (ASPA 145 Port Foster, Deception Island, South Shetland Islands; ASPA 152 Western Bransfield Strait and ASPA 153 Eastern Dallmann Bay) only when necessary and when transit through the areas does not jeopardize the values to be protected as described in each management plan.

Location

ASPA 145 Port Foster, Deception Island, South Shetland Islands
ASPA 152 Western Bransfield Strait
ASPA 153 Eastern Dallmann Bay

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–015

2. *Applicant:* Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas (ASPAs). The following ASPAs contain historic huts from the Heroic Age of Antarctic Exploration: ASPA 155 Cape Evans, Ross Island; ASPA 157 Backdoor Bay, Cape Royds, Ross; ASPA

158 Hut Point, Ross Island and ASPA 159 Cape Adare, Borchgrevink Coast.

The permit will allow educational visits to the historic huts for persons associated with the United States Antarctic Program. All visits will be conducted in accordance with the management plan for the specific sites.

Location

ASPA 155 Cape Evans, Ross Island
ASPA 157 Backdoor Bay, Cape Royds, Ross
ASPA 158 Hut Point, Ross Island
ASPA 159 Cape Adare, Borchgrevink Coast

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–016

2. *Applicant:* Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas (ASPAs). The following sites will potentially be visited: ASPA 105 Beaufort Island, McMurdo Sound, Ross Sea; ASPA 116 New College Valley, Caughley Beach, Cape Bird, Ross Island; ASPA 121 Cape Royds, Ross Island; ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island; ASPA 124 Cape Crozier, Ross Island; ASPA 155 Cape Evans, Ross Island; ASPA 157 Backdoor Bay, Cape Royds, Ross; ASPA 158 Hut Point, Ross Island; and ASPA 172 Lower Taylor Glacier and Blood Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land. The purpose is to gather professional video footage, still photographs, and to Interview scientists. Any footage, pictures, Interviews, and information gathered during site visits to the ASPA's could potentially be used in outreach videos, archived for future use, or be published in *The Antarctic Sun,* the official online news publication of the U.S. Antarctic Program which is managed by the National Science Foundation. Visits to the ASPA's listed in this application will be limited as operational, scientific conditions, and the availability of transportation permit.

Location

ASPA 105 Beaufort Island, McMurdo Sound, Ross Sea
ASPA 116 New College Valley, Caughley Beach, Cape Bird, Ross Island
ASPA 121 Cape Royds, Ross Island
ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island
ASPA 124 Cape Crozier, Ross Island
ASPA 155 Cape Evans, Ross Island
ASPA 157 Backdoor Bay, Cape Royds, Ross
ASPA 158 Hut Point, Ross Island
ASPA 172 Lower Taylor Glacier and Blood Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–017

3. *Applicant:* Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Take. Periodically native mammal and bird species enter the aircraft runways, the roads, and the ice pier at McMurdo Station, or the pier or general station area at Palmer Station. Such invasions pose operational safety concerns as well as the potential to harm the animals. As such, it will be necessary to herd these animals out of harm's way. The herding method uses non-lethal and humane techniques to cause as little disturbance as possible to the animals. The primary technique consists of personnel slowly approaching the animals with their arms outstretched to the sides, and continuing toward the animal until they have been moved approximately 20 to 30 feet from the operational area. Occasionally, it may be necessary to use flags mounted on bamboo poles in order to steer animals out of the operational areas. Individuals tasked with wildlife removal will be trained in proper techniques designed to minimize disturbance.

Location

McMurdo Station and associated operational sites, Ross Island and Palmer Station, Antarctic Peninsula.

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–018

4. *Applicant:* Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Entry into ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island in order to conduct scientific projects already in place, or conduct projects added during the term of this permit. Scientists conduct research projects that include, but are not limited to operation of an ELFNLF receiver, riometer and magnetometer for studies of the earth's magnetic field and ionosphere, high latitude neutral mesospheric and thermospheric dynamics and thermodynamics, UV monitoring, aerosols investigations, and pollution surveys. Daily access is needed for equipment monitoring, data acquisition, calibrations, and repairs. Scientific visitors may enter the site for educational and for oversight purposes. Personnel from the Antarctic Support Contractor departments may be called upon to perform inspections, maintenance, fueling, or repair functions at the facilities within the ASPA. Other personnel will need to enter the ASPA to monitor and maintain or repair weather equipment within the site. Government officials may enter the site to observe and determine whether modifications to the Management Plan or the USAP implementing procedures are warranted.

Location

ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–019

5. *Applicant:* Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas: ASPA 113 Litchfield Island, Arthur Harbor, Anvers Island, Palmer Archipelago; ASPA 117 Avian Island, Marguerite Bay, Antarctic Peninsula; ASPA 128 Western shore of Admiralty Bay, King George Island, South Shetland Islands; ASPA 139 Biscoe Point, Anvers Island, Palmer Archipelago; and ASPA 149 Cape Shirreff and San Telmo Island, Livingston Island, South Shetland Islands. The Antarctic Support Contractor's staff provides routine logistics support in the transport of science teams and supporting personnel, and in field camp put-in and take-out. Entry into an ASPA would occur only to support a science project for which a permit has been issued. Entry needs and requirements will be reviewed by ASC Environmental Health and Safety Department prior to entry and reported per standard procedures.

Location

ASPA 113 Litchfield Island, Arthur Harbor, Anvers Island, Palmer Archipelago
ASPA 117 Avian Island, Marguerite Bay, Antarctic Peninsula
ASPA 128 Western shore of Admiralty Bay, King George Island, South Shetland Islands
ASPA 139 Biscoe Point, Anvers Island, Palmer Archipelago
ASPA 149 Cape Shirreff and San Telmo Island, Livingston Island, South Shetland Islands

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–020

6. *Applicant:* Permit Application: 2017–020, Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Introduce non-indigenous species into Antarctica. An ACA permit is requested for import and use of a commercially available, bacteria supplement for municipal Wastewater Treatment Plants, to be used in the wastewater treatment plant at McMurdo Station, Antarctica. Benefits include better sludge settling and dewatering, control of surface foam and filamentous growth, reduction of total sludge volume and improved plant performance even in well-operated treatment plants. This supplement is a proprietary mixture of enzymatic substrate, nutrient base and bacteria for the treatment process. Bacteria would not be released to the marine environment. Most of the bacteria are eventually captured in the wastewater treatment plant's solids that are dewatered, compressed and retrograded to the U.S. The effluent from the wastewater treatment plant is treated with a UV sterilization system before it is discharged from the plant, killing all remaining bacteria before it reaches the sewage outfall.

Location

McMurdo Station, Ross Island, Antarctica

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–021

7. *Applicant:* Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas (ASPAs): ASPA 121 Cape Royds, Ross Island; ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island; ASPA 124 Cape Crozier, Ross Island; ASPA 131 Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land; ASPA 137 North-west White Island, McMurdo Sound; ASPA 138 Linneaus Terrace, Asgard Range, Victoria Land; ASPA 172 Lower Taylor Glacier and Blood Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land; and ASPA 175 High Altitude Geothermal sites of the Ross Sea region. The Antarctic Support Contractor's staff provides routine logistics support in the transport of science teams and supporting personnel. Additionally, staff is required to conduct occasional operations, maintenance, construction, and rehabilitation activities in support of science at designated ASPA locations in the Ross Island Area. Petroleum Helicopters Incorporated is the primary means of transport for grantees and support personnel to and from sites; a pilot and helicopter technician would also enter the ASPA. Entry into an ASPA would occur only to support a science project for which a permit has been issued. Entry needs and requirements will be reviewed by ASC Environmental Health and Safety Department prior to entry and reported per standard procedures.

Location

ASPA 121 Cape Royds, Ross Island
ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island
ASPA 124 Cape Crozier, Ross Island
ASPA 131 Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land
ASPA 137 North-west White Island, McMurdo Sound
ASPA 138 Linneaus Terrace, Asgard Range, Victoria Land
ASPA 172 Lower Taylor Glacier and Blood Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land
ASPA 175 High Altitude Geothermal sites of the Ross Sea region

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–022

8. *Applicant:* Jerry McDonald (Principal in Charge), *Leidos Innovations Group,* Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Introduce non-indigenous species into Antarctica. An ACA permit is requested for import of a of the commercially available freeze-dried marine bacterium *Vibrio fisheri* for experimental use and calibration of equipment at the Crary Science and Engineering Center McMurdo Station. The bacterium is used as one of the reagents for the Microtox toxicity analyzer. All equipment used with the bacterium will be autoclaved to destroy any residual bacteria; there will be no release to the environment.

Location

McMurdo Station, Ross Island, Antarctica

Dates

September 1, 2016 to September 1, 2021

Permit Application: 2017–023

9. *Applicant*: Jerry McDonald (Principal in Charge), Leidos Innovations Group, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas (ASPAs): ASPA 105 Beaufort Island, McMurdo Sound, Ross Sea; ASPA 106 Cape Hallett, Northern Victoria Land, Ross Sea; ASPA 113 Litchfield Island, Arthur Harbor, Anvers Island, Palmer Archipelago; ASPA 121 Cape Royds, Ross Island; ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island; ASPA 123 Barwick and Balham Valleys, Southern Victoria Land; ASPA 124 Cape Crozier, Ross Island; ASPA 131 Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land; ASPA 137 North-west White Island, McMurdo Sound; ASPA 138 Linneaus Terrace, Asgard Range, Victoria Land; ASPA 139 Biscoe Point, Anvers Island, Palmer Archipelago; ASPA 154 Botany Bay, Cape Geology, Victoria Land; ASPA 172 Lower Taylor Glacier and Blood Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land; and ASPA 175 High Altitude Geothermal sites of the Ross Sea region. The purpose is to conduct a review of the ASPA management plans, which normally occurs every five years per the Protocol on Environmental Protection to the Antarctic Treaty. The Antarctic Support Contract Environmental Health and Safety Department will enter an ASPA on an as needed basis. Reasons for entering the ASPA could be to collect information on site status in anticipation of the 5 year ASPA review, general management and maintenance concerns such as ensuring that all signs and boundary markers are legible and secured, or to address any environmental concern or potential environmental release within the ASPA. Visits for these management purposes would be pre-approved by the U.S. Antarctic Program's Environmental Officer.

Location

ASPA 105 Beaufort Island, McMurdo Sound, Ross Sea
ASPA 106 Cape Hallett, Northern Victoria Land, Ross Sea
ASPA 113 Litchfield Island, Arthur Harbor, Anvers Island, Palmer Archipelago
ASPA 121 Cape Royds, Ross Island
ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island
ASPA 123 Barwick and Balham Valleys, Southern Victoria Land
ASPA 124 Cape Crozier, Ross Island
ASPA 131 Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land
ASPA 137 North-west White Island, McMurdo Sound
ASPA 138 Linneaus Terrace, Asgard Range, Victoria Land
ASPA 139 Biscoe Point, Anvers Island, Palmer Archipelago
ASPA 154 Botany Bay, Cape Geology, Victoria Land
ASPA 172 Lower Taylor Glacier and Blood Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land
ASPA 175 High Altitude Geothermal sites of the Ross Sea region

Dates

September 1, 2016 to September 1, 2021

Nadene G. Kennedy,
Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–21655 Filed 9–8–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0064]

Information Collection: NRC Form 850A, "Request for NRC Contractor Building Access Authorization," NRC Form 850B, "Request for NRC Contractor Information Technology Access Authorization" and NRC Form 850C, "Request for NRC Contractor Security Clearance"

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 850A, "Request for NRC Contractor Building Access Authorization," NRC Form 850B, "Request for NRC Contractor Information Technology Access Authorization," and NRC Form 850C, "Request for NRC Contractor Security Clearance."

DATES: Submit comments by November 8, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0064. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0064 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0064.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML16173A274. The supporting statement for NRC Form 850A, NRC Form 850B, and NRC Form 850C, is available in ADAMS under Accession No. ML16173A283.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2094; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2016–0064 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 850A, "Request for NRC Contractor Building Access," NRC Form 850B, "Request for NRC Contractor Information Technology Access Authorization," and NRC Form 850C, "Request for NRC Contractor Security Clearance."
2. *OMB approval number:* 3150–0218.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 850A, NRC Form 850B, and NRC Form 850C.
5. *How often the collection is required or requested:* On Occasion.
6. *Who will be required or asked to respond:* NRC contractors, subcontractors and other individuals who are not NRC employees.
7. *The estimated number of annual responses:* 500.
8. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 85.
9. *Abstract:* Part 10 of title 10 of the *Code of Federal Regulations,* "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance," establishes requirements that individuals requiring an access authorization and/or employment clearance must have an investigation of their background. NRC Forms 850A, 850B, and 850C will be used by the NRC to obtain information on the NRC's contractors, subcontractors, and other individuals who are not NRC employees and require access to the NRC buildings, IT systems, sensitive information, sensitive unclassified information, or classified information.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: September 2, 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–21770 Filed 9–8–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice 9709]

Certification Pursuant to Section 7045(a)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (DIV. K, Pub. L. 114–113)

By virtue of the authority vested in me as the Deputy Secretary of State by Department of State Delegation of Authority 245–1, and pursuant to Section 7045(a)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113), I hereby certify the central government of El Salvador is taking effective steps to:

- Establish an autonomous, publicly accountable entity to provide oversight of the Plan of the Alliance for Prosperity in the Northern Triangle of Central America (Plan);
- combat corruption, including investigating and prosecuting government officials credibly alleged to be corrupt;
- implement reforms, policies, and programs to improve transparency and strengthen public institutions, including increasing the capacity and independence of the judiciary and the Office of the Attorney General;
- establish and implement a policy that local communities, civil society organizations (including indigenous and other marginalized groups), and local governments are consulted in the design, and participate in the implementation and evaluation of, activities of the Plan that affect such communities, organizations, and governments;
- counter the activities of criminal gangs, drug traffickers, and organized crime;
- investigate and prosecute in the civilian justice system members of military and police forces who are credibly alleged to have violated human rights, and ensure that the military and police are cooperating in such cases;
- cooperate with commissions against impunity, as appropriate, and with regional human rights entities;
- support programs to reduce poverty, create jobs, and promote equitable economic growth in areas contributing to large numbers of migrants;
- establish and implement a plan to create a professional, accountable civilian police force and curtail the role of the military in internal policing;
- protect the right of political opposition parties, journalists, trade unionists, human rights defenders, and other civil society activists to operate without interference;
- increase government revenues, including by implementing tax reforms and strengthening customs agencies; and
- resolve commercial disputes, including the confiscation of real property, between United States entities and such government.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: August 29, 2016.

Heather A. Higginbottom,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2016–21761 Filed 9–8–16; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 9710]

60-Day Notice of Proposed Information Collection: Self Certification and Ability To Perform In Emergencies (ESCAPE) Program

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *November 8, 2016.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Docket Number: DOS–2016–0058" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email: GrewJF@state.gov.*
- *Regular Mail:* Send written comments to: Department of State, Bureau of Medical Services—Medical Clearances, SA–15 Room 400, 1800 North Kent St., Rosslyn, VA. 22209.
- *Fax:* 703–875–5412.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Joan F. Grew, who may be reached on 703–875–5412 or at *GrewJF@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Self Certification and Ability To Perform in Emergencies (ESCAPE) Program.
- *OMB Control Number:* 1405–0224.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Medical Services (MED).
- *Form Number:* DS–6570.
- *Respondents:* Non-federal individuals being considered for contracted assignments at ESCAPE-designated posts.
- *Estimated Number of Respondents:* 200.
- *Estimated Number of Responses:* 200.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 100 annual hours.
- *Frequency:* One time per deployment to ESCAPE post.
- *Obligation to Respond:* Required to obtain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The goal of the "Self Certification And Ability To Perform In Emergencies" (ESCAPE) program is to ensure that non-federal individuals who are being considered for a contracted position at a designated post are capable of the unique, potentially challenging and life threatening conditions at ESCAPE posts. These individuals are required to review with a medical provider the pre-deployment acknowledgement form (DS–6570) and then affirm that they understand the physical rigors and security conditions at these posts and can perform any specified emergency functions. Medical information is collected from medical providers and respondents during this review. The Department of State is requesting approval of this Information Collection so non-federal individuals who will be selected for assignments can provide completed pre-deployment medical information. This Collection is allowed under the Foreign Service Act of 1980 (22 U.S.C. 3901) and the Basic Authorities Act of 1956 (22 U.S.C. 2651).

Methodology

The information collected will be collected using a form (DS–6570) during a medical review between a non-federal individual and his/her medical provider. The individual will submit the completed form, signed by both the individual and provider, to the Bureau of Medical Services at the U.S. Department of States.

Dated: September 1, 2016.

Behzad Shahbazian,

Director of Clinical Services, Bureau of Medical Services, Department of State.

[FR Doc. 2016–21756 Filed 9–8–16; 8:45 am]

BILLING CODE 4710–36–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35187 (Sub-No. 1)]

Grand Elk Railroad, Inc.—Acquisition of Incidental Trackage Rights Exemption—Norfolk Southern Railway Company

Grand Elk Railroad, Inc. (GDLK), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by assignment from Norfolk Southern Railway Company (NSR) trackage rights over approximately 3.3 miles of rail line owned by CSX Transportation, Inc. (CSXT) in Grand Rapids, Mich. (the Line). The Line extends from milepost CH 151.3± at Pleasant Street through milepost CH 151.6/CGE 0.0 to milepost CGE 3.0± north of Ann Street in Grand Rapids, Mich.

GDLK states that the subject trackage rights conveyance was incidental to GDLK's 2009 lease and operation of NSR-owned railroad lines extending generally from Grand Rapids, Mich., to Elkhart, Ind., but was inadvertently omitted from GDLK's notice of exemption for that transaction. *See Grand Elk R.R.—Lease & Operation Exemption—Norfolk S. Ry.*, FD 35187 (STB served Nov. 17, 2008). GLDK states that it has filed this notice to obtain proper agency authority for the prior assignment of trackage rights over the CSXT Line. (Notice 2.) GDLK contends that it operated pursuant to the CSXT Line trackage rights from its start-up in 2009 until August 10, 2016, when CSXT denied GDLK access to the line. (Notice 3). According to GDLK, CSXT is disputing the 2009 assignment and GDLK is addressing CSXT's contractual arguments in state court.[1] (*Id.*) GLDK states that it is seeking retroactive Board authorization to assure that the court is fully able to address the matters before it. (*Id.*) GDLK states that the transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

GDLK states that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, but that its projected annual revenues would exceed $5 million. Accordingly, GDLK is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. 49 CFR 1150.42(e).

In addition to its verified notice of exemption, GDLK has filed a petition for waiver of the 60-day labor notice requirements of 49 CFR 1150.42(e), asserting that: (1) No employees would be affected by the Board's authorization of these trackage rights; and (2) GDLK provided the required notice to NSR employees and relevant national labor organizations at the time of the underlying lease transaction in 2009. GDLK has also filed a petition to partially revoke the class exemption at 49 CFR 1150.41 to allow the Board to retroactively authorize the assignment of trackage rights from NSR to GDLK. GDLK's waiver request and petition for partial revocation will be addressed in a separate decision. The Board will establish in the decision on the waiver request the earliest date this transaction may be consummated.

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[1] GDLK acknowledges that the authority invoked by its notice is permissive and that issuance of this notice is not determinative of the disputed trackage rights contract issues. (Notice 6 n.3 (citing *Wis. Cent. Ltd.—Trackage Rights Exemption—Lines of Union Pac. R.R.*, FD 35992 (STB served Mar. 4, 2016), and *Rock & Rail, Inc.—Acquis. & Operation Exemption—Burlington N. & Santa Fe. Ry.*, FD 33738 (STB served Apr. 30, 1999).)

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 16, 2016 (at least seven days before the exemption becomes effective.)

An original and ten copies of all pleadings, referring to Docket No. FD 35187 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, Robert A. Wimbish, Fletcher & Sippell LLC, 29 North Wacker Drive, Suite 290, Chicago, IL 60606.

According to GDLK, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: September 2, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Tia Delano,

Clearance Clerk.

[FR Doc. 2016–21701 Filed 9–8–16; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36060]

Mississippi Southern Railroad, L.L.C.—Lease and Operation Exemption—The Kansas City Southern Railway Company

Mississippi Southern Railroad, L.L.C. (MSR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease from The Kanas City Southern Railway Company (KCS), and to operate, approximately 26.5 miles of rail line between milepost 133.0 near Bay Springs, Miss., and milepost 159.5 near Newton, Miss.

MSR and KCS originally entered into a lease agreement in 2005.[1] According to MSR, they have recently entered into an amended and restated lease agreement (Amended Agreement) which, among other things, extends the term of the lease to August 1, 2026. MSR will continue to be the operator of the 26.5-mile line.

MSR certifies that the projected annual revenues as a result of this transaction will not result in MSR's becoming a Class I or Class II rail carrier and that its projected annual revenue will not exceed $5 million. MSR states that the Amended Agreement regarding the subject line does not contain any provision that prohibits MSR from interchanging traffic with a third party or limit MSR's ability to interchange with a third party.

The proposed transaction may be consummated on or after September 24, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by September 16, 2016 (at least seven days prior to the date the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36060 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, Karl Morell, Karl Morell & Associates, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005.

According to MSR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: September 2, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2016–21773 Filed 9–8–16; 8:45 am]

BILLING CODE 4915–01–P

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[1] *See Miss. S. R.R.—Lease & Operation Exemption—Kan. City S. Ry.*, FD 34684 (STB served April 21, 2005).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eleventh RTCA SC–228 Minimum Performance Standards (MPS) for UAS Plenary Session

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Eleventh RTCA SC–228 Minimum Performance Standards (MPS) for UAS Plenary Session.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Eleventh RTCA SC–228 Minimum Performance Standards (MPS) for UAS Plenary Session.

DATES: The meeting will be held October 03–07, 2016 09:00 a.m.–04:30 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Albert Secen at *asecen@rtca.org* or 202–330–0647, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Eleventh RTCA SC–228 Minimum Performance Standards (MPS) for UAS Plenary Session The agenda will include the following:

SC–228 Plenary #11 Agenda

October 3, 2016

Working Group Breakout Sessions

October 4, 2016

Working Group Breakout Sessions

October 5, 2016

Working Group Breakout Sessions

October 6, 2016

Working Group Breakout Sessions

October 7, 2016

Plenary Session
1. Welcome/Introductions/Administrative Remarks/SC–228 Participation Guidelines
  a. Reading of the Public Announcement by the DFO
  b. Reading of the RTCA Proprietary References Policy
2. Agenda Overview
3. Review/Approval of Minutes From Plenary #10

4. Review of RTCA Steering Committee Activity
5. Report From WG–1 for DAA MOPS
   a. DAA MOPS Document Approval
   b. Air-to-Air Radar MOPS Document Approval
6. Report From WG–2, C2
7. Report From Phase 2 TOR WG
8. Action Item Review
9. Other Business
10. Date, Place and Time of Next Meeting(s)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 6, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–21738 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Disposal of Aeronautical Property at Bowman Field Airport Louisville, KY (LOU)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration is requesting public comment on a request by the Louisville Regional Airport Authority (LRAA), to release 0.11 acres of land at Bowman Field Airport from federal obligations. This release will be retroactive for a project that was necessary for the construction of Interstate Highway 64.The request consists of the following:

A 0.11 acre of parcel of airport property was condemned by the Commonwealth of Kentucky in 1959. The court awarded this property to the State of Kentucky via quitclaim deed. This property is bounded by Beargrass Creek to the north, Cannons Lane to the east and Old Cannons Lane to the West. The current use of this property is as a small segment of Interstate Highway 64.This property was part of the 291.95 acre parcel conveyed from the United States of America with obligations to the Louisville And Jefferson County Air Board (now The Louisville Regional Airport Authority) on February 2, 1948. This request will release this property from federal obligations. This action is taken under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before October 11, 2016.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, Attn: Jamal Stovall, Community Planner, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles T. Miller, Executive Director, Louisville Regional Airport Authority at the following address: 700 Administration Drive, Louisville, KY 40209.

FOR FURTHER INFORMATION CONTACT: Mr. Jamal Stovall, Community Planner, Federal Aviation Administration, Memphis Airports District Office, 2600, Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property for disposal at Bowman Field Airport, 2815 Taylorsville Rd. Louisville, KY 40205, under the provisions of 49 U.S.C. 47107(h)(2). The FAA determined that the request to release property at Bowman Field Airport (LOU) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Louisville Regional Airport Authority is releasing approximately 0.11 acres of airport property. This parcel was conveyed from the United States of America to the Louisville And Jefferson County Air Board (now The Louisville Regional Airport Authority) in 1948 with obligations. This release will be retroactive for a project that was necessary for the construction of Interstate Highway 64. This request will release this property from federal obligations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Louisville Regional Airport Authority.

Issued in Memphis, Tennessee, on August 30, 2016.

Tommy L. Dupree,

Assistant Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2016–21706 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. 14 CFR part 121 to ensure safety-of-flight by making certain that adequate training is obtained and maintained by those who operate under this part of the regulation.

DATES: Written comments should be submitted by November 8, 2016.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Room 441, Federal Aviation Administration, ASP–110, 950 L'Enfant Plaza SW., Washington, DC 20024.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0739.

Title: Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216) specifically required the FAA to conduct rulemaking to ensure that all flightcrew members receive ground training and flight training in recognizing and avoiding stalls, recovering from stalls, and recognizing and avoiding upset of an aircraft, as well as the proper techniques to recover from upset. Public Law 111–216 also directed the FAA to require air carriers to develop remedial training programs for flightcrew members who have demonstrated performance deficiencies or experienced failures in the training environment.

Respondents: Approximately 83 operators.

Frequency: Approximately 10 times.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 802 hours.

Issued in Washington, DC, on September 2, 2016.

Ronda Thompson,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2016–21708 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reduction of Fuel Tank Flammability on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. The FAA's Fuel Tank Flammability rule requires manufacturers to report to the FAA every six months for up to 5 years after the flammability reduction system is incorporated into the fleet. The data is needed to assure system performance meets that predicted at the time of certification.

DATES: Written comments should be submitted by November 8, 2016.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Room 441, Federal Aviation Administration, ASP–110, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0710.

Title: Reduction of Fuel Tank Flammability on Transport Category Airplanes.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Design approval holders use flammability analysis documentation to demonstrate to their FAA Oversight Office that they are compliant with the Fuel Tank Flammability Safety rule (73 FR 42443). Semi-annual reports submitted by design approval holders provide listings of component failures discovered during scheduled or unscheduled maintenance so that the reliability of the flammability reduction means can be verified by the FAA.

Respondents: Approximately 5 design approval holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 4000 hours.

Issued in Washington, DC, on September 2, 2016.

Ronda Thompson,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2016–21710 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0324]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from 18 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

FMCSA received applications from 18 individuals who requested an exemption from the FMCSRs prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV from operating CMVs in interstate commerce.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds "such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption."

The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the criteria eligibility or meet the terms and conditions for a Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). Therefore, the 18 applicants in this notice have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 17 applicants do not meet the minimum time requirement for being seizure-free, either on or off of anti-seizure medication:

Timothy Arthur (TX)
Thomas Fish (NY)
Richard Fryman (MN)
David Harrell (MD)
Patrick Hahn (WI)
Allan Jones (NY)
Angela Kalik (CA)
Douglas Kelbley (OH)
Richard Koewacich (OH)
Brent Krock (PA)
Donald Kuritz (MO)
Ryan Lewis (CA)
Donna Nardi (NJ)
Harold Seaton (KY)
Eric Smits (WI)
Scott Tucker (KY)
Jammian Weaver (MO)

The following applicant is a citizen of Canada:

Michael Murchison

Issued on: August 26, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–21715 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0118]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial.

SUMMARY: FMCSA announces its decision to deny applications from three individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On September 21, 2015, FMCSA published a notice announcing receipt of applications from eight individuals requesting an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV in interstate commerce and requested comments from the public (80 FR 57036). The public comment period closed on October 21, 2015, and 13 comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting three of the eight exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). A final notice announcing the decision to grant five of the eight exemptions and providing a response to the 13 comments received was published on May 26, 2016 (FR 81 33577).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the Federal epilepsy standard for a renewable two-year period if it finds "such exemption is likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption."

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. The Agency considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013 **Federal Register** notice (78 FR 3069) provides the current MEP recommendations which is the criteria the Agency uses to make decisions regarding seizure exemptions.

IV. Conclusion

The Agency has determined that these three applicants do not satisfy the criteria eligibility or meet the terms and conditions for a Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). Therefore, the applicants in this notice have been denied an exemption from the physical qualification standards in 49 CFR 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial. The following drivers were listed previously in **Federal Register** Notice FMCSA–2015–0118 published on September 21, 2015:

Ricky B. Alegre—Mr. Alegre has a history of a single provoked seizure in 2014. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Michael Todd Hill—Mr. Hill has a history of a seizure disorder. His last seizure was in 2013. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Billy Ray Hunter—Mr. Hunter has a history of a seizure disorder. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Issued on: August 26, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–21718 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0119]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial.

SUMMARY: FMCSA announces its decision to deny applications from four individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On November 12, 2015, FMCSA published a notice announcing receipt of applications from 13 individuals requesting an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV in interstate commerce and requested comments from the public (80 FR 70065). The public comment period closed on December 14, 2015, and seven comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting four of the 13 exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). A final notice announcing the decision to grant nine of the 13 exemptions and providing a response to the seven comments received was published on May 9, 2016 (FR 80 28130).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the Federal epilepsy standard for a renewable two-year period if it finds "such exemption is likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption."

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. The Agency considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013 **Federal Register** notice (78 FR 3069) provides the current MEP recommendations which is the criteria the Agency uses to make decisions regarding seizure exemptions.

IV. Conclusion

The Agency has determined that these four applicants do not satisfy the criteria eligibility or meet the terms and conditions for a Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). Therefore, the applicants in this notice have been denied an exemption from the physical qualification standards in 49 CFR 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial. The following drivers were listed previously in **Federal Register** Notice FMCSA–2015–0119 published on November 12, 2015:

Christopher Wayne Beaver—Mr. Beaver has a history of a single seizure in 2014.

He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Daniel Gerald Bretz, Jr.—Mr. Bretz has a history of a seizure disorder. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Patrick P. Griffis, Sr.—Mr. Griffis has a history of two seizures. His last seizure was in 2015. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Trevor Bryant Jacobson—Mr. Jacobson has a history of a single seizure prior to the removal of a benign brain tumor. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Issued on: August 26, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–21720 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0320]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial.

SUMMARY: FMCSA announces its decision to deny applications from nine individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On December 21, 2015, FMCSA published a notice announcing receipt of applications from 17 individuals requesting an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV in interstate commerce and requested comments from the public (80 FR 79397). The public comment period closed on January 20, 2016, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting nine of the 17 exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). A final notice announcing the decision to grant eight of the 17 exemptions was published on May 9, 2016 (FR 81 28134).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the Federal epilepsy standard for a renewable two-year period if it finds "such exemption is likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption."

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. The Agency considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013 **Federal Register** notice (78 FR 3069) provides the current MEP recommendations which is the criteria the Agency uses to make decisions regarding seizure exemptions.

IV. Conclusion

The Agency has determined that these nine applicants do not satisfy the criteria eligibility or meet the terms and conditions for a Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). Therefore, the applicants in this notice have been denied an exemption from the physical qualification standards in 49 CFR 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial. The following drivers were listed previously in **Federal Register** Notice FMCSA–2015–0320 published on December 21, 2015:

Richard Bailey—Mr. Bailey has a history of a seizure disorder. His last seizure was in 2009. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

James P. Murphy—Mr. Murphy has a history of seizure related to a brain tumor. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Jason Christopher Nikolas—Mr. Nikolas has a history of epilepsy. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Curtis Joseph Palubicki—Mr. Palubicki has a history of epilepsy. His last seizure was September 2008. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Franklin Prettyman—Mr. Prettyman has a history of a seizure disorder. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Chad Riemenschneider—Mr. Riemenschneider has a history of a seizure disorder. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Isaac E. Rogers—Mr. Rogers has a history of a seizure disorder. His last seizure was in 2009. He takes anti-seizure medication. He not meet the MEP guidelines at this time.

Kenneth P. Schmitt—Mr. Schmitt has a history of a seizure disorder. He did not provide sufficient medical documentation to determine the date of his last seizure. He does not meet the MEP guidelines at this time.

Alfonso Valdivieso—Mr. Valdivieso has a history of seizures. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Issued on: August 26, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–21717 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0117]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial.

SUMMARY: FMCSA announces its decision to deny applications from seven individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On August 12, 2015, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV in interstate commerce and requested comments from the public (80 FR 48406). The public comment period closed on September 11, 2015, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting seven of the 12 exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). A final notice announcing the decision to grant five of the 12 exemptions and providing a response to the one comment received was published on June 13, 2016 (FR 81 38262).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the Federal epilepsy standard for a renewable two-year period if it finds "such exemption is likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption."

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. The Agency considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013 **Federal Register** notice (78 FR 3069) provides the current MEP recommendations which is the criteria the Agency uses to make decisions regarding seizure exemptions.

IV. Conclusion

The Agency has determined that these seven applicants do not satisfy the criteria eligibility or meet the terms and conditions for a Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). Therefore, the applicants in this notice have been denied an exemption from the physical qualification standards in 49 CFR 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial. The following drivers were listed previously in **Federal Register**

Notice FMCSA–2015–0117 published on August 12, 2015:

Nicholes Arroyo—Mr. Arroyo has a history of epilepsy. His last seizure was in 2014. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Kevin Scott Brelsford—Mr. Brelsford has a history of epilepsy. His last seizure was in 2010. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Donald Adin Horst—Mr. Horst has a history of a single provoked seizure in 2009 as the result of a subdural hematoma. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Bradley Jolley—Mr. Jolley has a history of a epilepsy. Mr. Jolley did not provide enough medical information to determine the date of his last seizure. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Charles Ray Paul—Mr. Paul has a history of epilepsy. His last seizure was in 2006, and his medical documentation notes that he experiences stereotypical auras. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Eric Lee Troendle—Mr. Troendle has a history of a brain tumor. His last seizure was in 2014. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Brian J. Underwood—Mr. Underwood has a history of epilepsy. His last seizure was in 2003. Mr. Underwood did not provide enough medical information to determine the last change in his anti-seizure medication. He does not meet the MEP guidelines at this time.

Issued on: August 26, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–21716 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0321]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial.

SUMMARY: FMCSA announces its decision to deny applications from nine individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On March 9, 2016, FMCSA published a notice announcing receipt of applications from 31 individuals requesting an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV in interstate commerce and requested comments from the public (81 FR 12553). The public comment period closed on April 8, 2016, and three comments were received, all in support of granting seizure exemptions.

FMCSA has evaluated the eligibility of these applicants and concluded that granting nine of the 31 exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). A final notice announcing a decision on the remaining 22 requests will be published at a later date.

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the Federal epilepsy standard for a renewable two-year period if it finds "such exemption is likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption."

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. The Agency considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013 **Federal Register** notice (78 FR 3069) provides the current MEP recommendations which is the criteria the Agency uses to make decisions regarding seizure exemptions.

IV. Conclusion

The Agency has determined that these nine applicants do not satisfy the criteria eligibility or meet the terms and conditions for a Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). Therefore, the applicants in this notice have been denied an exemption from the physical qualification standards in 49 CFR 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial. The following drivers were listed previously in **Federal Register**

Notice FMCSA–2015–0321 published on March 9, 2016:

George J. Conte—Mr. Conte has a history of epilepsy. His last seizure was in 2014. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Dean W. Drury—Mr. Drury has a history of seizure following surgery in February 2015. He currently takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Ronald Alan Nagy, Jr—Mr. Nagy underwent a craniotomy for resection of an astrocytoma in June 2015. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Nicholas Ramirez—Mr. Ramirez has a history of a seizure disorder. His last seizure was in 2010. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Tory J. Shuler—Mr. Shuler has a history of seizure. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Randall T. Slavik—Mr. Slavik has a history of a single seizure in 2015. He takes anti-seizure medication. He not meet the MEP guidelines at this time.

Michael Spinelli, IV—Mr. Spinelli has a history of seizure. His last seizure was in 2015. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Daisy Tapia—Ms. Tapia has a history of a single seizure in 2012 followed by a resection of a benign meningioma. She takes anti-seizure medication. She does not meet the MEP guidelines at this time.

Paul Richard Trombley—Mr. Trombley has a history of a seizure disorder. His last seizure was in 2014. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Issued on: August 26, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–21719 Filed 9–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2015–0106]

Petition for Special Approval of Alternate Standard

In accordance with Part 232 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 17, 2015, the National Railroad Passenger Corporation (Amtrak) has requested a Special Approval of an alternate standard for 49 CFR 238.311(a)—*Single car test,* as prescribed in 49 CFR 238.21(b)—*Special approval procedure.* FRA assigned the request Docket Number FRA–2015–0106.

Amtrak requests permission to continue to maintain and test the 9600 series cab coach car CCB II brake systems under the requirements of 49 CFR 229.29 as an alternative maintenance procedure that provides equivalent safety to the standard in APTA–PR–M–S–005–98 Rev 2.1 outlined in 49 CFR 238.311.

Amtrak's fleet of 9600 series cab coach cars was originally equipped with a 26–C (car) type of brake system along with additional 26–L (locomotive) style of control valves in the cab, to control the brake system when in push/pull service. Amtrak previously maintained and tested the 26–C style of valves per 49 CFR 238.309 and the 26–L style of valves per 49 CFR 229.29, along with the requirement of FRA Form F6180–49A (''Blue Card'') to be located in the cab. The main reservoir leakage tests and the brake cylinder leakage tests were conducted per APTA–PR–M–S–005–98 Rev 2.1.

The cab cars are presently equipped with New York Air Brake's CCB II brake system designed for locomotives and are being maintained and tested under the requirements of 49 CFR 229.29. The main reservoir leakage test and the brake cylinder leakage test continue to be tested per APTA–PR–M–S–005–98 Rev 2.1. The 92-day and annual test procedures for these CCB II-equipped cab cars are found in documents submitted to the public docket.

Copies of these documents and the petition, as well as any written communications concerning the petition, are available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 11, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Safety, Chief Safety Officer.

[FR Doc. 2016–21762 Filed 9–8–16; 8:45 am]

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Part II

Social Security Administration

20 CFR Parts 404 and 416
Revisions to Rules Regarding the Evaluation of Medical Evidence;
Proposed Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2012–0035]

RIN 0960–AH51

Revisions to Rules Regarding the Evaluation of Medical Evidence

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We are proposing several revisions to our medical evidence rules. The proposals include redefining several key terms related to evidence, revising our list of acceptable medical sources (AMS), revising how we consider and articulate our consideration of medical opinions and prior administrative medical findings, revising who can be a medical consultant (MC) and psychological consultant (PC), revising our rules about treating sources, and reorganizing our evidence regulations for ease of use. These proposed revisions would conform our rules with the requirements of the Bipartisan Budget Act of 2015 (BBA), reflect changes in the national healthcare workforce and in the manner that individuals receive primary medical care, simplify and reorganize our rules to make them easier to understand and apply, allow us to continue to make accurate and consistent decisions, and emphasize the need for objective medical evidence in disability and blindness claims.

DATES: To ensure that we consider your comments, we must receive them by no later than November 8, 2016.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2012–0035 so that we may associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the "Search" function to find docket number SSA–2012–0035. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments and background documents are available for public viewing on the Federal eRulemaking portal at *www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *www.socialsecurity.gov.*

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I. Background

The Social Security Act (Act) mandates that we find an individual disabled only if he or she furnishes the medical and other evidence that we require.[1] Much of the terminology and organization of our current evidence rules remain the same as when we adopted them in 1991 (the 1991 final rules).[2] In the 1991 final rules, we defined evidence, listed categories of evidence, explained the factors we use to weigh medical opinions, and explained that we give controlling weight to medical opinions from treating sources about the nature and severity of claimants' impairments if they are well-supported by medically acceptable clinical and laboratory diagnostic techniques and are not inconsistent with other substantial evidence in the record. This latter rule is commonly known as our "treating physician rule."

We have modified these rules a few times since 1991. We expanded the list of AMSs who can be medical consultants, who can provide medical opinions, and who can provide us with objective medical evidence to establish the existence of an impairment(s) at step 2 of the sequential evaluation process.[3] We also issued rules that clarified how administrative law judges (ALJ) and the Appeals Council (AC) must consider opinion evidence from State agency medical and psychological consultants, other program physicians and psychologists, and medical experts whom we consult.[4] In addition, we have issued rules modifying the requirement that we recontact a person's medical source(s) when we need to resolve an inconsistency or insufficiency in the evidence he or she provided.[5] We also clarified a person's duty to submit medical and other evidence that relates to his or her disability claim.[6]

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[1] 42 U.S.C. 423(d)(5)(A) and 42 U.S.C. 1382c(a)(3)(H)(i).

[2] Standards for Consultative Examinations and Existing Medical Evidence, 56 FR 36932 (Aug. 1, 1991).

As part of our reevaluation of our regulations that deal with weighing medical opinions, we asked the Administrative Conference of the United States (ACUS)[7] to provide us with recommendations on how to improve our medical opinion evidence in the disability and blindness claims evaluation process. ACUS issued its Final Report (ACUS Final Report) in April 2013.[8]

In light of the ACUS Final report and our adjudicative experience, we are proposing a number of revisions to our medical source and opinion evidence regulations to make them easier to understand and use. We expect that these changes will help us further ensure our high level of accuracy in future determinations and decisions. We discuss each of these proposed revisions below.

We also propose to revise related rules about who can be MCs and PCs in conformity with requirements in the BBA.

II. Redefining and Categorizing Terms Related to Evidence

We propose to redefine and categorize several terms to make our rules of evidence easier to understand and use. We also propose to identify certain types of evidence that are inherently neither valuable nor persuasive for our purposes and for which we will not articulate an analysis in determinations and decisions.

A. What Is Evidence

Our current rules state that evidence is anything that we obtain or is submitted to us that relates to a claim.[9] Our rules list several types of evidence as examples: (1) Objective medical evidence, (2) other evidence from medical sources (including medical opinions), (3) statements you or others make, (4) information from other sources, (5) decisions by any other governmental or nongovernmental agency, and (6) certain findings and opinions made by our employees and program experts.[10]

Our regulations also state that medical source opinions on issues reserved to the Commissioner do not satisfy our definition of a medical opinion.[11] We issued Social Security Ruling (SSR) 96–5p to explain how we consider these opinions.[12] However, our adjudicative experience has shown that we can improve the current regulatory structure for categorizing and evaluating this evidence.

B. Overview of Proposed Revisions

We propose to reorganize and define categories of evidence to make them easier to apply in the disability adjudication process. The proposed categories of evidence are: (1) Objective medical evidence, (2) medical opinions, (3) other medical evidence, (4) statements from nonmedical sources, and (5) prior administrative medical findings.[13] Each category would have a specific definition and purpose in our administrative process.

We would categorize evidence from medical sources other than our Federal and State agency MCs and PCs as objective medical evidence, medical opinions, or other medical evidence.[14] We would categorize evidence from our MCs and PCs as prior administrative medical findings.[15] We would categorize evidence from nonmedical sources, such as from the claimant, family, and employers, as statements from nonmedical sources.

Because all evidence we would receive would fall within one of the categories of evidence, we would define all of the evidence categories. This means we would remove the current language that evidence is not limited to the listed examples because all evidence we receive would fit into a specified category of evidence.

We propose to list and define the categories of evidence in 20 CFR 404.1513(a)(1)–(5) and 416.913(a)(1)–(5). The following chart displays the proposed organization:

Category of evidence	Source	Summary of definition
Objective medical evidence	Medical sources	Signs, laboratory findings, or both.[16]
Medical opinions	Medical sources	Statements about functional limitations and abilities.
Other medical evidence	Medical sources	All other evidence from medical sources that are not objective medical evidence or medical opinions.
Statements from nonmedical sources	Nonmedical sources	All evidence from nonmedical sources.

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[3] See, *e.g.*, Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Medical and Other Evidence of Your Impairment(s) and Definition of Medical Consultant, 65 FR 34950 (June 1, 2000). See also, Optometrists as "Acceptable Medical Sources" To Establish a Medically Determinable Impairment, 72 FR 9239 (March 1, 2007).

[4] Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Evaluating Opinion Evidence, 65 FR 11866 (March 7, 2000).

[5] How We Collect and Consider Evidence of Disability, 77 FR 10651 (February 23, 2012).

[6] See Id., and Submission of Evidence in Disability Claims, 80 FR 14828 (March 20, 2015).

[7] ACUS is "an independent federal agency dedicated to improving the administrative process through consensus-driven applied research, providing nonpartisan expert advice and recommendations for improvement of federal agency procedures." About the Administrative Conference of the United States (ACUS), available at *http://www.acus.gov/about-administrative-conference-united-states-acus.*

[8] Administrative Conference of the United States, SSA Disability Benefits Programs: Assessing the Efficacy of the Treating Physician Rule (April 3, 2013), available at *http://www.acus.gov/sites/default/files/documents/Treating_Physician_Rule_Final_Report_4-3-2013_0.pdf.*

[9] 20 CFR 404.1512(b) and 416.912(b).

[10] 20 CFR 404.1512(b)(1)(i)–(viii) and 416.912(b)(1)(i)–(viii).

[11] The current definition of issues reserved to the Commissioner is found in 404.1527(d)(2)–(d)(3) and 416.927(d)(2)–(d)(3).

[12] SSR 96–5p: Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner (61 FR 34471) (July 2, 1996)).

[13] 20 CFR 404.1512(d) and 416.912(d).

[14] When the Appeals Council uses the expertise of the medical sources on its Medical Support Staff, we categorize and consider the evidence from those medical sources as we do for any medical source who is not an MC or PC. We would continue to follow this practice under the rules proposed in this NPRM.

[15] Our current rules clarify that when MCs and PCs are part of the adjudicative team that makes disability determinations, their findings are not evidence at the level at which they are made. See 20 CFR 404.1527(e)(1)(i) and 416.927(e)(1)(i). However, in subsequent levels of appeal, the MC and PC findings from the prior adjudicative levels become evidence. See 20 CFR 404.1527(e)(1)(ii) and 416.927(e)(1)(ii). This NPRM retains that distinction.

[16] Our current rules define signs and laboratory findings in 20 CFR 404.1528 and 416.928. We discuss the current definitions and our proposed definitions for these terms in the preamble section II.D. Objective medical evidence below.

Category of evidence	Source	Summary of definition
Prior administrative medical findings	MCs and PCs	Findings about medical issues made by MCs and PCs at a prior administrative level.

We define and explain each category later in this preamble.

Additionally, we frequently receive documents from medical sources that contain different categories of evidence on a single page, such as treatment notes containing both a laboratory finding and a medical opinion interpreting that finding. We would continue to follow our current practice to treat each kind of evidence from a medical source according to its category of evidence, even if there is more than one category of evidence on a single page.

C. Medical Sources

Medical evidence comes from medical sources. Our current rules define medical sources as AMSs or other healthcare providers who are not AMSs,[17] and identify who is an AMS in 20 CFR 404.1502 and 416.902.

We propose to revise our current definition of medical sources in 20 CFR 404.1502 and 416.902 to specify that a medical source must be an individual who is: (1) Licensed as a healthcare worker by a State and working within the scope of practice permitted under State or Federal law, or (2) certified by a State as a speech-language pathologist or a school psychologist and acting within the scope of practice permitted under State or Federal law. We propose to specify these two requirements in order that we may categorize evidence from healthcare providers as evidence coming from medical sources practicing lawfully.

Because an entity, such as a hospital, may have possession of a medical source's evidence, we would clarify in proposed 20 CFR 404.1512(b)(1)(i) and 416.912(b)(1)(i) that we will contact a claimant's medical sources and entities that maintain a claimant's medical evidence when we develop a complete medical history.

D. Objective Medical Evidence

We currently define objective medical evidence as signs *and* laboratory findings.[18] To clarify our current policy, we propose to redefine objective medical evidence as signs, laboratory findings, or both to make clear that signs alone *or* laboratory findings alone are objective medical evidence. We propose to include this definition in 20 CFR 404.1502(f) and 416.902(f).

As part of our effort to better organize our regulations, we propose to move the existing definitions for signs, symptoms, and laboratory findings from current 20 CFR 404.1528 and 416.928 to the definitions section of 20 CFR 404.1502 and 416.902. We also propose to remove 20 CFR 404.1528 and 416.928 and make conforming changes to other related sections.

For clarity, we also propose to make minor editorial revisions to the definition of laboratory findings in proposed 20 CFR 404.1502(c) and 416.902(g) that are consistent with our current policy.

E. Medical Opinions

Our program experience suggests that the reorganization and clarification of our current definitions and rules about medical opinions would make them easier to understand and use. For example, the category of "medical opinions" is called "other evidence from medical sources" in 20 CFR 404.1512(b)(1)(ii) and 416.912(b)(1)(ii), but referred to as "statements from physicians, psychologists, or other [AMSs] that reflect judgments about the nature and severity of an individual's impairment(s), including symptoms, diagnosis and prognosis, what the individual can still do despite impairment(s), and physical or mental restrictions" in 20 CFR 404.1527(a)(2) and 416.927(a)(2). Our current rules state that we weigh medical opinions using several factors as part of our consideration of this evidence.[19]

We discuss statements about what an individual can still do despite his or her impairment(s).[20] We state that such a statement should describe the kinds of physical and mental capabilities we list in those sections. Similarly, although we do not directly define the phrase "your physical or mental restrictions" in 20 CFR 404.1527(a)(2) and 416.927(a)(2), our current rules in 20 CFR 404.1545(b)–(d) and 416.945(b)–(d) state which abilities we look for that may be limited by physical or mental restrictions.

Our adjudicative experience has also shown that a narrower definition of medical opinions would improve our adjudicative process. Diagnoses and prognoses do not describe how an individual functions. Also, while we always consider a claimant's own statements about his or her symptoms, how we consider this kind of evidence is different from how we consider evidence from medical sources.[21] A more appropriate focus of medical opinions would be perspectives from medical sources about claimants' functional abilities and limitations.

To help make our evidence rules easier to use and apply, we propose to redefine medical opinions to combine relevant, current text about functional abilities and limitations from different regulatory sections. We propose to specify that all medical sources other than MCs and PCs, not just AMSs, can create evidence that we will categorize as medical opinions. We also propose to remove symptoms, diagnosis, and prognosis from the current definition of medical opinions and add them to the definition of "other medical evidence" because these concepts do not describe a claimant's functional abilities and limitations. We propose to add a definition for medical opinion in 20 CFR 404.1513(a)(2) and 416.913(a)(2).

For adults filing for disability or blindness under titles II or XVI of the Act, a medical opinion would be a statement from a medical source about what an individual can still do and whether the individual has one or more impairment-related limitations or restrictions in specific abilities. For adult claims, we would specify which limitations and restrictions in current 20 CFR 404.1545 and 416.945 we would consider. For disability claims for children filing under title XVI of the Act,[22] we propose to refer to a child's abilities to function in the six domains of functioning found in current 20 CFR 416.926a(g)–(l).

We discuss our proposals about considering and articulating our consideration of medical opinions below in Section VI, Consideration and articulation of medical opinions and prior administrative medical findings.

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[17] 20 CFR 404.1502 and 416.902.

[18] 20 CFR 404.1512(b)(1)(i) and 416.912(b)(1)(i) as defined in 20 CFR 404.1528(b) and (c) and 416.928(b) and (c).

[19] See 20 CFR 404.1527 and 416.927.

[20] 20 CFR 404.1513(c) and 416.913(c).

[21] See 404.1529 and 416.929.

[22] 20 CFR 416.906 states: "If you are under age 18, we will consider you disabled if you have a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. Notwithstanding the preceding sentence, if you file a new application for benefits and you are engaging in substantial gainful activity, we will not consider you disabled. We discuss our rules for determining disability in children who file new applications in §§ 416.924 through 416.924b and §§ 416.925 through 416.926a."

F. Other Medical Evidence

Our current rules of evidence include a category of evidence referred to as "other evidence from medical sources," which includes medical history, opinions, and statements about treatment a claimant has received.[23] Our current rules also describe medical reports and imply that only AMSs can create medical reports.[24] Our rules describe medical reports by what they *should* include: (1) Medical history, (2) clinical findings (such as the results of physical or mental status examinations); (3) laboratory findings (such as blood pressure, x-rays); (4) diagnosis (statement of disease or injury based on its signs and symptoms); (5) treatment prescribed with response and prognosis; and (6) a statement about a claimant's physical and mental abilities based on the AMS' findings.[25]

To help make our evidence rules easier to use and apply, we propose to combine the categories "other evidence from medical sources" and "medical reports" into a single evidence category called "other medical evidence." We also propose to clarify that all medical sources, not just AMSs, can produce other medical evidence. This category of evidence would include all medical evidence that is not objective medical evidence or a medical opinion, as well as examples of common kinds of evidence from our current rules. This would include items such as medical reports, diagnosis, and prognosis.

We propose to move judgments about the nature and severity of a claimant's symptoms, diagnosis, and prognosis from the current definition of medical opinion to the proposed definition of other medical evidence because these concepts do not describe a claimant's functional abilities and limitations. We also propose to exclude laboratory findings from the proposed definition of other medical evidence because this is already included as part of the proposed definition of objective medical evidence. We would make these revisions in proposed 20 CFR 404.1513(a)(2) and 416.913(a)(2).

We would continue to categorize and consider evidence from medical experts testifying at the hearings level and from medical sources in the Medical Support Staff at the Appeals Council in the same ways we consider evidence from all other medical sources who are not MCs or PCs.

G. Statements From Nonmedical Sources

Our current rules state that nonmedical sources can provide two types of evidence: (1) Statements you or others make and (2) information from other sources.

First, we define the term "statements you or others make" as statements a claimant or others make about a claimant's impairment(s), restrictions, daily activities, efforts to work, or any other statement a claimant makes to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, or in testimony during our administrative proceedings.[26]

Second, we define "information from other sources" by referencing 20 CFR 404.1513(d) and 416.913(d) for the definition of other sources.[27] In those sections, we define the term "other sources," for instance, as medical sources who are not listed as AMS, educational personnel, social welfare agency personnel, family members, friends, neighbors, and clergy.[28] There is no difference in how we consider a statement a claimant or other nonmedical source makes and information from other sources; both sources can produce evidence to show the severity of an impairment and how it affects an individual's ability to work.

To help make our evidence rules easier to use and apply, we propose to combine "statements you or others make" and "information from other sources" into one category of evidence to be called "statements from nonmedical sources." We would not include medical sources in this category of evidence. We would define this category of evidence as statements nonmedical sources make about an individual's impairment(s), restrictions, daily activities, efforts to work, or any other relevant statements an individual makes to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings.

We also propose to distinguish between medical sources and nonmedical sources. A medical source would be someone currently classified as an AMS or another source listed in current 20 CFR 404.1513(d)(1) and 416.913(d)(1) who is licensed or certified as a healthcare worker by a State and working within the scope of their healthcare license or certification. Consistent with this realignment of our rules, we propose to define nonmedical sources in 20 CFR 404.1502 and 416.902 as a source of evidence who is not a medical source and specify that this includes the claimant, educational personnel, social welfare agency personnel, family members, caregivers, friends, neighbors, and clergy. We would continue to consider statements from nonmedical sources to be important evidence that we would consider under 20 CFR 404.1520b and 416.920b.

H. Prior Administrative Medical Findings

State agencies make disability determinations at the initial and reconsideration levels of our administrative review process.[29] In most States, a disability examiner makes a disability determination together with a State agency MC or PC, as appropriate.[30] In States where we have been conducting our single decision maker pilot, our rules also allow Federal components to employ MCs and PCs to function just as they would for a State.[31]

The MCs and PCs create evidence that we currently categorize as both medical opinions and administrative findings of fact.[32] These administrative findings of fact are about medical issues, including, but not limited to, the existence and severity of impairment(s), the existence and severity of symptoms, whether an impairment(s) meets or medically equals the requirements for an impairment in our Listing of Impairments,[33] and an individual's residual functional capacity (RFC). Although MCs and PCs base these administrative findings of fact on evidence in the case, the administrative findings are not, in themselves, evidence at the level of the administrative review process at which we make the findings.[34] They become medical evidence at subsequent levels in the administrative review process that adjudicators must consider and weigh as opinion evidence because MCs and PCs are highly qualified and are also experts in Social Security disability evaluation.[35]

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[23] 20 CFR 404.1512(b)(1)(ii) and 416.912(b)(1)(ii).

[24] See 20 CFR 404.1512–404.1513(b), 404.1519g(a), and 416.912–416.913(b), and 404.919g(a).

[25] 20 CFR 404.1513(b)–(b)(6) and 416.913(b)–(b)(6).

[26] 20 CFR 404.1512(b)(1)(iii) and 416.912(b)(1)(iii).

[27] 20 CFR 404.1512(b)(1)(iv) and 416.912(b)(1)(iv).

[28] 20 CFR 404.1513(d)(1)–(4) and 416.1513(d)(1)–(4).

[29] See 20 CFR 404.1615 and 416.1015.

[30] See 20 CFR 404.906(b)(2), 404.1615(c)(1), 416.1015(c)(1), and 416.1406(b)(2). In States where we are using a single decision maker (SDM) under the rules in 20 CFR 404.906 and 416.1406, when the State agency disability examiner makes the disability determination alone, the disability examiner may also consult with an MC or PC to help make a disability determination, when appropriate. However, section 832 of the Bipartisan Budget Act of 2015, Pub. L. 114–74, 129 Stat. 584, 613 affects the use of an SDM. This NPRM does not propose to change the rules that recognize SDM authority. We intend to publish a separate NPRM that discusses in more detail how we propose to end SDM authority.

[31] See 20 CFR 404.1661 and 416.1061.

[32] 20 CFR 404.1527(e) and 416.927(e).

[33] 20 CFR part 404, subpart P, Appendix 1.

To explain how we interpret these rules, we issued SSR 96–6p: Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence.[36] SSR 96–6p explains that when ALJs or the AC issue decisions, they must weigh these opinions and administrative findings of fact using the same factors used to weigh other medical opinions. It also explains that in appropriate circumstances an MC or PC opinion might be entitled to greater weight than an opinion from a claimant's treating source or an examining source.

In order to simplify our rules, we propose to combine the two types of evidence our current rules state MCs and PCs make—administrative findings of fact and medical opinions—into a single category of evidence called "prior administrative medical findings." We propose to define this evidence as findings about medical issues, other than the ultimate determination about whether you are disabled, made by our Federal and State agency medical and psychological consultants at a prior level of review based on their review of the evidence in your case record.

We propose to identify as prior administrative medical findings the following medical issues:

- The existence and severity of impairment(s);
- the existence and severity of symptoms;
- statements about whether an impairment(s) meets or medically equals the requirements for any impairment in the Listing of Impairments in 20 CFR part 404, subpart P, Appendix 1;
- in child claims under title XVI, whether an impairment(s) is functionally equivalent in severity to an impairment(s) in the Listing of Impairments in 20 CFR part 404, subpart P, Appendix 1;
- in adult claims, a claimant's residual functional capacity;
- whether an impairment(s) meets the duration requirement; and
- how the policies about failure to follow prescribed treatment and drug addiction and alcoholism relate to a claim.

These medical issues are similar to those currently listed in 20 CFR 404.1527(e)(1)(i) and 416.927(e)(1)(i). We would consider and articulate our consideration of prior administrative medical findings using the same factors we use to consider medical opinions from medical sources. However, due to our proposed revisions to the definition of the evidence category of medical opinion, we would remove from several regulation sections references to MCs and PCs making medical opinions.

Consistent with these proposals and our proposals below in Section VI, Consideration and articulation of medical opinions and prior administrative medical findings, we would also delete the definition of nonexamining source because it would be unnecessary as a result of other proposed revisions in this NPRM. We would also remove any reference to specialists during the initial and reconsideration levels because we would not use medical sources other than MCs and PCs. We propose to include these revisions in 20 CFR 404.1502, 404.1513(a)(6), 404.1513a, 416.902, 416.913(a)(6), and 416.913a.

I. Decisions by Other Governmental Agencies and Nongovernmental Entities

Several other governmental agencies and nongovernmental entities make decisions using their own rules about disability, blindness, and employability. These organizations include the Department of Veterans Affairs (VA), the Department of Defense (DOD), the Office of Personnel Management (OPM), the Department of Labor (DOL), State workers compensation programs, and private long-term disability insurance programs. As part of our claim development, we sometimes receive decisions or information about decisions made by other governmental agencies and nongovernmental entities, as well as the evidence relied on to make these decisions. Our current rules include a category of evidence called "decisions by any governmental or nongovernmental agency about whether you are blind or disabled." [37] Our current rules state that these decisions are not binding on us because we must make a disability or blindness decision based on the Act and our regulations.[38] We propose to clarify how we would consider disability and blindness decisions made by other agencies.

We address this aspect of our policy in SSR 06–03p,[39] in which we distinguish between issues reserved to the Commissioner—such as whether a claimant is disabled—and evidence that may have a bearing on our determination or decision of disability, including decisions by other governmental and nongovernmental agencies. In the ruling, we stated that we cannot ignore and must consider evidence of a disability decision by another governmental or nongovernmental agency. However, our program experience since we issued SSR 06–03p suggests we need to revise these policies.

There are four reasons why we should not need to consider or articulate in our written determinations or decisions our consideration of decisions from other governmental and nongovernmental agencies. First, the purpose of the Act and the specific eligibility requirements for disability and blindness benefits under titles II and XVI of the Act differ significantly from the purpose and eligibility requirements of other programs. These differences include eligibility criteria, duration, insured status, individualized versus categorical medical and functional assessments, onset rules, how subjective complaints are considered, employability findings, consideration of past work, and consideration of other work.[40] Therefore, other governmental agencies' or nongovernmental entities' decisions give us little indication whether a claimant is more or less likely to be found disabled or blind under the Act. Those decisions are not, by themselves, useful to us when we decide whether a claimant is disabled or blind under the Act and are therefore neither valuable nor persuasive evidence for determining disability or blindness under our rules.

For example, VA and SSA disability differ significantly in purpose as well as in eligibility criteria. In determining disability, the VA assigns a percentage disability rating based on a consideration of the effects of a disease or injury on a hypothetical, average person's ability to earn income without consideration of a specific veteran's age, education, or work experience.[41] In contrast, under our rules, unless a claimant's impairment(s) meets or medically equals a listing, we perform an individualized assessment that focuses on that particular claimant's ability to perform work in the national economy.

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[34] 20 CFR 404.1527(e)(1)(i) and 416.927(e)(1)(i).

[35] 20 CFR 404.1527(e)(2)(i) and 416.927(e)(2)(i).

[36] 61 FR 34466 (July 2, 1996).

[37] 20 CFR 404.1512(b)(1)(v) and 416.912(b)(1)(v).

[38] 20 CFR 404.1504 and 416.904.

[39] SSR 06–03p: Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not "Acceptable Medical Sources" in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies, 71 FR 45593 (August 9, 2006).

[40] These differences among the various programs are well-documented. For example, the Government Accountability Office (GAO) produced a report that highlighted the differences among SSA, VA, and DOD disability programs. GAO, Social Security Disability: Additional Outreach and Collaboration on Sharing Medical Records Would Improve Wounded Warriors' Access to Benefits, GAO–09–762 (September 2009), available at *http://www.gao.gov/assets/300/296693.pdf.*

As part of this individualized assessment, the Act requires us to consider several criteria, such as whether a claimant has worked (substantial gainful activity), whether the claimant's impairment(s) is expected to last at least 12 months or result in death (the duration requirement), how the claimant's impairment(s) limit his or her physical and mental ability to do work activities (severity and assessment of RFC), whether the claimant can perform in his or her past relevant work given his or her RFC, and whether the claimant's RFC, age, education, and work experience (the vocational factors) allow the claimant to perform other work that exists in significant numbers in the national economy. Thus, because of our different requirements, the mere fact that the VA process resulted in a particular disability rating is not predictive or useful evidence of whether the claimant will be found disabled under our rules, even upon consideration of the same impairment(s).

Similarly, the DOD and OPM follow rules that are substantially different from our rules when they make determinations on disability retirement. State agencies and the DOL make determinations under State and Federal workers' compensation programs, which vary from State to State and may involve determinations of partial disability, a concept that does not exist in our programs. These compensation programs may consider the individual's ability to do past work, but make no consideration of the individual's ability to do other work, as we are required to consider under our rules. Some States also make determinations about whether individuals are entitled to receive Medicaid and related benefits; however, those States may set individual eligibility criteria within the Federal minimum standards and may find individuals eligible to receive Medicaid for reasons other than disability. Furthermore, States may anticipate how we may interpret and apply our own rules regarding disability, but are not bound to follow our case development requirements and other regulations. Thus, in each instance, there are significant differences between our rules and the eligibility criteria and rules that other agencies or entities follow. Therefore, a finding of "disability" or a decision to award benefits made by any other agency or entity is not predictive of whether a claimant would be found disabled under our rules.

Second, a record may indicate that another agency or entity decided to award benefits, but not include the decision itself. Alternatively, the decision might be in the record, but may not include any explanation about the factual findings or reasons for the decision. In those instances, there is nothing substantive about the decision for our adjudicators to consider.

Third, our adjudicators follow regulations and other guidance specific to our program; they generally do not have a detailed understanding of the rules other agencies or entities apply when making their decisions. Consequently, our adjudicators lack the expertise to compare and contrast the differences between the Act and our rules, and the rules applied by another agency or entity. Accordingly, when our adjudicators follow our instructions in SSR 06–03p that require them to consider decisions in the record from another agency or entity in the record, they often simply state that they considered the other agency's or entity's decision, but that it was not binding because it was made using the other agency's or entity's rules and not ours. Our current requirement that adjudicators consider other agency's or entity's decisions therefore imposes an unnecessary articulation requirement on our adjudicators.

Fourth, over time Federal courts have interpreted and applied our rules and SSR 06–03p differently in different jurisdictions. For example, in some circuits, the United States Courts of Appeals have stated that we should give disability decisions from the VA great or substantial weight absent some reasoned, fact-specific explanation for discounting the VA disability decisions.[42] We administer a national disability program, and our goal is to apply rules uniformly.

We propose to revise our rules in 20 CFR 404.1504 and 416.904 to state that we will not provide any analysis in our determinations and decisions about how we consider decisions made by other governmental agencies or nongovernmental entities that an individual is disabled, blind, or unemployable in any claim for disability or blindness under titles II and XVI of the Act, and that we are not bound by those decisions. Although we would categorize decisions made by other governmental agencies or nongovernmental entities within the other medical evidence category if made by a medical source or a statement if made by a nonmedical source, we propose to state in 20 CFR 404.1520b and 416.920b that these decisions are inherently neither valuable nor persuasive to our disability and blindness determinations.

Importantly, however, we would continue to consider relevant medical and other evidence that supports or underlies other governmental agencies' or nongovernmental entities' decisions that we receive based on the applicable evidence categories proposed above. For example, we would continue to consider a compensation and pension examination from a VA physician that underlies a VA disability rating, even though our adjudicators would not be required to give any particular weight to or analyze the specific VA disability rating. Similarly, we would continue to consider a medical opinion from a medical source submitted in support of a claimant's workers' compensation claim or Medicaid application, even though our adjudicators would not be required to give any weight to or discuss the decision to award workers' compensation or Medicaid benefits.

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[41] 38 CFR 4.1.

[42] For example, the Ninth Circuit held that our ALJs must "ordinarily give great weight to a VA determination of disability" although "the ALJ may give less weight to a VA disability rating if he gives persuasive, specific, valid reasons for doing so that are supported by the record." *McCartey* v. *Massanari* 298 F.3d 1072, 1076 (9th Cir. 2002). This principle has been followed in a number of more recent cases. See, *e.g., Valentine* v. *Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 694–95 (9th Cir. 2009) (ALJ's explanation for giving little weight to a VA disability determination that rested on the general grounds that the VA and SSA inquiries are different ran afoul of *McCartey,* although the ALJ's reliance on evidence not before the VA was a persuasive, specific, and valid reason); *Berry* v. *Astrue,* 622 F.3d 1228, 1236 (9th Cir. 2010) (rejecting two reasons the ALJ gave for discounting a VA determination, accepting a third "in part," and remanding for reconsideration of the VA disability determination); *McLeod* v. *Astrue,* 640 F.3d 881, 885–86 (9th Cir. 2011) (claimant denied a full and fair hearing because the record suggested he had a VA disability rating, which was not in the record); *Hiler* v. *Astrue,* 687 F.3d 1208, 1211–12 (9th Cir. 2012) (ALJ misunderstood and did not properly evaluate the three VA decisions in the record). The Fourth Circuit has found *McCartey* persuasive and held that "SSA must give substantial weight to a VA disability rating" although "an ALJ may give less weight to a VA disability rating when the record before the ALJ clearly demonstrates that such a deviation is appropriate." *Bird* v. *Astrue,* 699 F.3d 337, 343 (4th Cir. 2012). Subsequently, at least one district court within the Fourth Circuit has interpreted *Bird* as announcing a new standard for evaluating VA decisions. See, *e.g.,, Persaud* v. *Colvin,* No. 2:12-cv-661, 2014 WL 198922, *8–11 (E.D. Va. Jan. 14, 2014); *Jacobs* v. *Colvin,* No. 2:12-cv-508, 2013 WL 5741538, *5–7 (E.D. Va. Oct. 22, 2013).

We could also still use information from other governmental agencies or nongovernmental entities we receive to process claims. For example, we would retain authority to expedite processing of claims for Wounded Warriors and for veterans with a 100% VA disability compensation rating, as we do now.[43]

For clarity, we also propose to change our current regulatory term "decisions by other organizations and agencies" to "decisions by other government agencies and nongovernment entities."

J. Disability Examiner Findings

Currently, in most States, disability examiners consult with MCs and PCs to make disability and blindness determinations at the initial and reconsideration levels of the administrative appeals process.[44] The disability examiner's findings about medical issues, vocational issues, and whether an individual is disabled becomes our determination. Under our current rules, we do not weigh disability examiner findings at subsequent levels of the administrative appeals process because adjudicators at each level make new findings for their determination or decision. This is in contrast to how we treat administrative findings about medical issues by MCs and PCs, which *are* evidence we weigh at subsequent levels of review. While this distinction is implied in our current regulation,[45] we propose to state in 20 CFR 404.1520b(c)(2) and 416.920b(c)(2) that we will not provide any analysis about how we considered disability examiner findings from a prior level of adjudication.

K. Statements on Issues Reserved to the Commissioner

Statements on issues reserved to the Commissioner consist of opinions or statements about how we should interpret and apply our policies to a claim instead of simply stating a claimant's abilities and limitations. Although our current list of evidence types in 20 CFR 404.1512 and 416.912 does not include issues reserved to the Commissioner, our rules do discuss medical source opinions on issues reserved to the Commissioner in 20 CFR 404.1527(d) and 416.927(d). Our rules state that opinions on issues reserved to the Commissioner are not medical opinions, because they are administrative findings that are dispositive of a case, *i.e.,* that direct the determination or decision of disability. We give several examples of issues reserved to the Commissioner. These include statements by medical sources that a claimant is disabled or unable to work, whether a claimant's impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments, a claimant's RFC, and how we should apply the vocational factors.

We issued SSR 96–5p to explain how we consider these types of opinions.[46] The SSR states: (1) The difference between issues reserved to the Commissioner and medical opinions; (2) that treating source opinions on issues reserved to the Commissioner are never entitled to controlling weight or special significance; (3) that opinions from any medical source about issues reserved to the Commissioner must never be ignored, and that the notice of the determination or decision must explain the consideration given to the treating source's opinion(s); and (4) the difference between the opinion called a medical source statement and the administrative finding called an RFC assessment.[47]

Since we published SSR 96–5p, we have frequently received requests to provide further guidance about how to identify and evaluate opinions about issues reserved to the Commissioner. One area we have been asked to clarify is how to consider and weigh the opinions because we do not give them any special significance. We also have received requests to provide additional examples of issues that are reserved to the Commissioner.

Consistent with our goals to better define and organize our evidence regulations to produce more accurate and consistent determinations and decisions, we propose to define a statement on an issue reserved to the Commissioner as a statement that would direct the determination or decision of disability. Because we are responsible for making the determination or decision about whether a person meets the statutory definition of disability, a statement on an issue reserved to the Commissioner is inherently neither valuable nor persuasive to us. Although a statement on an issue reserved to the Commissioner would be categorized within other medical evidence if made by a medical source or a statement if made by a nonmedical source, we would not provide any analysis about how we considered such statements at all in our determinations and decisions.

An example of a medical opinion that we could consider valuable or persuasive and that we may provide analysis about in a determination or decision is a medical source's statement that a claimant could lift 10 pounds for up to one-third of an 8-hour day and less than 10 pounds for up to two-thirds of an 8-hour day, stand and walk for about 2 hours of an 8-hour day, and sit for up to 6 hours of an 8-hour day. An example of a statement on an issue reserved to the Commissioner that we would not provide any analysis about in a determination or decision because it is inherently neither valuable nor persuasive is that the claimant has an RFC for sedentary work. The second statement is an issue reserved to the Commissioner because it includes assumptions about what particular medical limitations and restrictions mean in terms of our policy.

Another example of a statement on an issue reserved to the Commissioner that we would not provide any analysis about in a determination or decision is that the claimant "is disabled." This statement includes assumptions about how we should apply our policy in a particular claim.

To help adjudicators, representatives, and courts identify statements on issues reserved to the Commissioner, we propose to include the following in 20 CFR 404.1520b(c)(3) and 416.920b(c)(3):

- Statements that an individual is or is not disabled, blind, able to work, or able to perform regular or continuing work;
- statements about whether or not an individual's impairment(s) meets the duration requirement for disability;
- statements about whether or not an individual's impairment(s) meets or equals any listing in the Listing of Impairments;
- in title XVI child claims, statements about whether or not an individual's impairment(s) functionally equals the Listings;
- in adult claims, statements about what an individual's RFC is using our programmatic terms about the functional exertional levels in Part 404, Subpart P, Appendix 2, Rule 200.00

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[43] See Information for Wounded Warriors and Veterans Who Have a Compensation Rating of 100% Permanent & Total (P&T), available at *https://www.ssa.gov/people/veterans.*

[44] Some States use SDMs in certain situations to make a disability determination without consulting an MC or PC. See 20 CFR 404.906(b)(2), 404.1615(c), 416.1015(c), and 416.1406(b)(2).

[45] See 20 CFR 404.1512(b)(6)–(8) and 416.912(b)(6)–(8).

[46] SSR 96–5p: Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner (61 FR 34471 (July 2, 1996)).

[47] The SSR also included a discussion about requirements for recontacting treating sources. Since the publication of the SSR, we also published final rules that revised how we consider medical source statements from State disability examiners (65 FR 11866 (March 7, 2000)).

instead of descriptions about his or her functional abilities and limitations;

- in adult claims, statements about whether or not an individual's RFC prevents him or her from doing past relevant work;
- in adult claims, statements that an individual does or does not meet the requirements of a medical-vocational rule in Part 404, Subpart P, Appendix 2; and
- statements about whether or not an individual's disability continues or ends when we conduct a continuing disability review (CDR).

We would also rescind SSR 96–5p consistent with these proposed revisions.

III. Establishing the Existence of an Impairment

A. Current Rules

To be found disabled under titles II or XVI of the Act,[48] an individual must have a physical or mental impairment that results from anatomical, physiological, or psychological abnormalities that are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.[49] At step 2 of the sequential evaluation process, we determine both whether an individual has a medically determinable impairment(s) and, once the existence of the impairment(s) is established, whether it is severe.[50]

We interpret the Act as requiring us to obtain objective medical evidence—signs or laboratory findings—from an AMS to establish the existence of a medically determinable impairment.[51] Once we have objective medical evidence from an AMS showing that the claimant has a medically determinable impairment or combination of impairments at step 2, we then consider evidence from all sources, regardless of AMS status, to determine the severity of those impairments at step 2. If we do not have objective evidence from an AMS to establish the existence of an impairment, we try to get this evidence from a claimant's own AMS or by purchasing a consultative examination (CE) with an AMS.[52] Even if we already have evidence of signs or laboratory findings from a medical source who is not an AMS, under our current policy we cannot use this evidence to establish the existence of a medically determinable impairment.

Our current policies also preclude the following types of evidence from establishing the existence of a medically determinable impairment at step 2 because they are not objective medical evidence: (1) A statement of symptoms, (2) a diagnosis, and (3) a medical opinion.[53] The Act requires medically acceptable clinical and laboratory diagnostic techniques as evidence.[54] A claimant's self-reported symptoms and a medical source's own subjective opinion do not meet this statutory requirement. We also cannot rely on a diagnosis to establish the existence of an impairment because sometimes medical sources diagnose individuals without using objective medical evidence. For example, a medical source may rely on a claimant's reported symptoms or another medical source's medical opinion, treat reported symptoms under a provisional diagnosis, or rule-out diagnosis without making this clear in the treatment note. In addition, we have found—especially with electronic medical records—diagnoses that are listed solely for billing and medical insurance reasons but that do not include supporting objective medical evidence.

B. Proposed Revisions

In order to assist representatives and our adjudicators in interpreting our rules, we propose to revise our rules to state affirmatively our current policy that we will not use a diagnosis, medical opinion, or an individual's statement of symptoms to establish the existence of an impairment(s). We would clarify our rules to state that a physical or mental impairment must be established by objective medical evidence from an AMS. We would continue to follow our current policy if we have objective medical evidence from an AMS that a claimant has a severe impairment(s) at step 2, we will consider all evidence to determine the severity of the impairment(s) and all other findings in the sequential evaluation process. We would also continue to follow our current policy in 20 CFR 404.1529 and 416.929 about how we evaluate symptoms, including pain, when we determine severity and RFC. We would make these revisions to 20 CFR 404.1521, 404.1522, 416.921, and 416.922.

IV. Acceptable Medical Sources (AMS)

A. Current AMS Rules

As noted above, under our current policy, only objective medical evidence from AMSs can be used to establish an impairment(s) at step 2 of the sequential evaluation process. Also, as we discuss below in "Treating Sources," only AMSs can be treating sources. Our current rules recognize the following medical sources as AMSs:

- Licensed physicians (medical or osteopathic doctors).
- Licensed or certified psychologists. Included are school psychologists, or other licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting, for purposes of establishing intellectual disability, learning disabilities, and borderline intellectual functioning only.
- Licensed optometrists, for purposes of establishing visual disorders only (except, in the U.S. Virgin Islands, licensed optometrists, for the measurement of visual acuity and visual fields only).
- Licensed podiatrists, for purposes of establishing impairments of the foot, or foot and ankle only, depending on whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or the foot and ankle.
- Qualified speech-language pathologists, for purposes of establishing speech or language impairments only. For this source, qualified means that the speech-language pathologist must be licensed by the State professional licensing agency, or be fully certified by the State education agency in the State in which he or she practices, or hold a Certificate of Clinical Competence from the American Speech-Language-Hearing Association.[55]

B. Why We Are Proposing To Add New AMSs

We propose to revise our rules to reflect changes in the national healthcare workforce and the manner that many people now receive primary medical care. Much of the medical evidence we receive in disability claims comes from primary care providers. Under our current rules, we are not able to consider an increasing number of primary care providers to be AMSs. For example, more than 50 percent of the nation's more than 55,000 nurse practitioners specialize in primary care,[56] and the total number of nurse practitioners increased almost 28 percent from 2004 to 2011.[57] A nurse practitioner is one type of Advanced Practice Registered Nurses (APRN) we propose to add to our AMS list below. Nurse practitioners provide diagnostic and clinical treatment of acute and chronic illnesses. In the U.S., there is a simultaneous increasing shortage of primary care physicians.[58] In fact, the American Association of Medical Colleges predicts a shortage of 90,000 primary care physicians by 2020.[59] The Institute of Medicine recommended Federal agencies recognize the advanced level of care provided by APRNs.[60]

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[48] The Act defines a disability as the "inability to engage in any substantial gainful activity by reason of any physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. 423(d) and 1382c(a)(3). We have a different definition for determining statutory blindness. See 42 U.S.C. 416(i)(1) and 1382c(a)(2).

[49] 42 U.S.C. 423(d)(3) and 1382c(a)(3)(D).

[50] See 20 CFR 404.1520(a)(4)(ii) and 416.920(a)(4)(ii).

[51] See, *e.g.*, SSR 16–3p; Titles II and XVI: Evaluation of Symptoms in Disability Claims, 81 FR 14166 (March 16, 2016).

[52] See 20 CFR 404.1519a and 416.919a.

[53] See 20 CFR 404.1508, 404.1528(a), 404.1529, 416.908, 416.928(a), and 416.929 and SSR 96–2p.

[54] 42 U.S.C. 423(d)(3) and 1382c(a)(3)(D).

[55] 20 CFR 404.1513(a) and 416.913(a).

Similarly, an increasing percentage of healthcare services for hearing-related impairments come from audiologists instead of physicians.[61] The Bureau of Labor Statistics predicts employment of audiologists will increase 25 percent by 2018.[62] Audiologists assess, diagnose, and treat dysfunction in hearing, auditory and vestibular function, balance, and related disorders by obtaining a complete history and performing tests that include otoscopic examination, pure-tone audiometry, tympanometry, otoacoustic emissions measurements, and speech audiometry.

Uneven geographic distribution of the healthcare workforce makes it difficult for individuals living in rural areas to access primary care providers who are AMSs. APRNs are more likely than licensed physicians to work in rural areas and to provide primary care treatment to those with limited access to physicians.[63]

Additionally, the National Law Center on Homelessness and Poverty (NLCHP) has expressed concern that the limited list of AMSs creates unnecessary delays in processing disability applications for low-income claimants who may receive primary healthcare only from non-AMS medical sources, such as APRNs.[64] NLCHP notes that health professionals other than physicians and psychiatrists staff most programs for homeless claimants. As stated above, we pay for expensive consultative examinations with AMSs to establish the existence of an impairment when we already have this objective medical evidence from medical sources who are not AMSs. Adding these additional qualified AMSs would also reduce the need to pay for consultative examinations.

C. Proposed New AMSs

We propose to recognize both audiologists and APRNs with specific scope of practice requirements as AMSs in 20 CFR 404.1502(a) and 416.902(a). We propose to add to the AMS list licensed audiologists for purposes of establishing hearing loss and auditory processing disorders. We also propose to add to the AMS list APRNs and other licensed advanced practice nurses with other titles acting within their licensed scope of practice. For the reasons discussed below, we are satisfied that these medical sources have sufficiently consistent and rigorous national licensing requirements for education, training, certification, and scope of practice.

Audiologists provide a substantial amount of the healthcare for hearing-related impairments and States have dramatically increased licensing requirements for audiologists during the past decade. Audiologists obtain State licensure after completing a master's or doctoral level-degree in a nationally accredited educational program. Most States require audiologists to pass a national audiology exam, such as the National Examination in Audiology administered by the Educational Testing Service, and to complete a significant number of supervised clinical training hours. Many States recognize that the nearly uniform criteria for certification from the American Board of Audiology (ABA) or a Certificate of Clinical Competence in Audiology (CCC–A) from the American Speech-Language-Hearing Association (ASHA) meet or exceed the States' own audiology licensing requirements. To receive certification from the ABA, an audiologist must complete doctoral coursework, pass a national audiology examination, and complete 2,000 supervised hours of direct patient care. To receive a CCC–A, an audiologist must obtain a doctoral degree, pass the National Examination in Audiology, and complete a minimum of 1,820 supervised hours of clinical practicum.

With a few minor State variations, there are four main kinds of APRNs: Certified Nurse Midwife, Nurse Practitioner, Certified Registered Nurse Anesthetist, and Clinical Nurse Specialist. Although the majority of States use the APRN title, a minority of States use other similar titles, such as Advanced Practice Nurse and Advanced Registered Nurse Practitioner. We propose to consider all of these medical source groups as AMSs if they are licensed by a State and acting within the scope of their practice. We would maintain a current list of State-specific AMS titles in our subregulatory instructions. We would not categorize evidence from an APRN to be AMS evidence if the APRN acted outside of his or her scope of practice, since under such circumstances, an APRN would be violating his or her State license.

State licensure requirements for APRNs are rigorous. To receive APRN licensure, all States require these medical sources to have a registered nurse license and an advanced nursing educational degree.[65] In addition, nearly all States require APRNs to obtain and maintain national certification by a standard advanced nursing credentialing agency,[66] and these credentials require extensive education and training requirements.[67] Despite minor variability in nomenclature and licensure requirements, a growing majority of States are adopting the Consensus Model for APRN Regulation from the American Association of Nurse Practitioners, which defines the standards for licensure, accreditation, certification, education, and practice.[68] Given the number of States and types of licenses, we consider the very few current differences in licensing requirements not to outweigh the sufficiently national and increasingly uniform State requirements, especially given the trend to full implementation of the Consensus Model for APRN Regulation.

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[56] Agency for Healthcare Research and Quality, Primary Care Workforce Facts and Stats No. 3, available at *http://www.ahrq.gov/research/findings/factsheets/primary/pcwork3/index.html.*

[57] American College of Nurse Practitioners, Numbers of Nurse Practitioners, available at *http://www.acnpweb.org;* The Henry J. Kaiser Family Foundation, Total Nurse Practitioners, 2011, available at *http://www.statehealthfacts.org.;* U.S. Bureau of Labor Statistics, available at *http://www.bls.gov/ooh/Healthcare/Physician-assistants.htm.*

[58] Kaiser Commission on Medicaid and the Uninsured, Improving Access to Adult Primary Care in Medicaid: Exploring the Potential Role of Nurse Practitioners and Physician Assistants, available at *http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8167.pdf.*

[59] American Association of Medical Colleges, More U.S. Medical Students Match to Primary Care for Second Consecutive Year, available at *https://www.aamc.org/newsroom.*

[60] Committee on the Robert Wood Johnson Foundation Initiative on the Future of Nursing, at the Institute of Medicine; Institute of Medicine: The Future of Nursing: Leading Change, Advancing Health (2011), available at *http://www.nationalacademies.org/hmd/Reports/2010/The-Future-of-Nursing-Leading-Change-Advancing-Health/Report-Brief-Scope-of-Practice.aspx.*

[61] See, for example, Sieminski, Louis R. The audiologist's role in early intervention. Hearing Journal. Vol 63 (1): 35 (2010).

[62] U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, available at *http://www.bls.gov/ooh/healthcare/audiologists.htm.*

[63] Agency for Healthcare Research and Quality, available at *http://www.ahrq.gov/research/findings/factsheets/primary/pcwork3/index.html.*

[64] National Law Center on Homelessness and Poverty, Improving Access: Expanding Acceptable Medical Sources for the Social Security Administration Disability Determination Process, (2012), pg. 1, available at *http://www.manatt.com/uploadedFiles/Content/News_and_Events/Firm_News/5.14.12%20Improving%20Access,%20FINAL.pdf.*

[65] In a very few States, the advanced nursing educational degree requirement may be achieved indirectly from the requirement to obtain the national certification. See Indiana's Administrative Code 848 IAC 4–1–4 about Nurse Practitioners, available at *http://www.in.gov/pla/files/ISBN.2011_EDITION.pdf.* See also South Dakota law 20:48:05:01 about Certified Registered Nurse Anesthetists, available at *http://legis.sd.gov/Rules/DisplayRule.aspx?Rule=20:48:05:01.*

[66] In a very few States, the advanced nursing credentialing is optional. These are: (1) California for Nurse Practitioners, see Cal.C.Reg. 16.8.1482, available at *http://www.rn.ca.gov/pdfs/regulations/bp2834-r.pdf;* (2) Indiana for Nurse Practitioners and Clinical Nurse Specialists, see Indiana's Administrative Code 848 IAC 4–1–4 and –5, available at *http://www.in.gov/pla/files/*

While we believe that these medical sources reflect the modern primary healthcare delivery system and are among the most highly qualified medical sources, we are particularly interested in receiving public comment on which criteria we should use when we determine which medical sources should be an AMS.

In particular, we are interested in public comments about whether we should add physician assistants (PAs) to the AMS list. PAs are significant health care providers for certain underserved populations, including those in rural communities. We would like public comments on whether the licensing, education, and training requirements for PAs are sufficient and consistent across States for PAs to be considered AMSs in all cases. We would also like public comments on whether there are additional criteria we should use to support the inclusion of PAs on the AMS list in particular circumstances, and how we should consider these issues in the context of a national disability program with uniform rules. We are also interested in whether or not there are other professionals, such as licensed clinical social workers, who we should include on the AMS list.

D. Other Revisions to the Current AMS List

We propose to make six additional revisions to our current AMS list. The first two proposed revisions would update our rules about optometrists to reflect current State law about scope of practice. Our current rules include licensed optometrists for establishing visual disorders only, except in the U.S. Virgin Islands where licensed optometrists are included for the measurement of visual acuity and visual fields only.[69] Subsequent to publication of the final rule in 2007 that added optometrists to the AMS and medical consultant list,[70] the U.S. Virgin Islands enacted legislation that authorized full scope of practice for optometrists.[71] Therefore, we propose to delete the exception for licensed optometrists in the U.S. Virgin Islands from our rules.

On the other hand, Puerto Rico now has a limited scope of practice for licensed optometrists. Although licensed optometrists in Puerto Rico can perform visual acuity examination and visual field measurement, they are unable to prescribe medication or perform surgery.[72] Consequently, in proposed 20 CFR 404.1502(a)(3) and 416.902(a)(3), we propose to limit licensed optometrists in Puerto Rico to the measurement of visual acuity and visual fields as is consistent with their scope of practice.

Our third proposal is to revise our definition of psychologists as AMSs to include independently practicing, licensed or certified, psychologists. All of these psychologists have a minimum of a master's degree. Although this is our subregulatory interpretation of the current regulatory language,[73] we believe it would be clearer to place it in the regulatory language.

Fourth, we propose to enumerate school psychologists separately from psychologists to clarify that the current "independent practice level" requirement applies to licensed or certified psychologists only but not to school psychologists. This is not a change in our current policy.

Fifth, we propose to revise our rules to reflect that the title of the certificate that the ASHA issues to qualified speech-language pathologists is now a Certificate of Clinical Competence in Speech-Language Pathology. Our current rules in 20 CFR 404.1513(a)(5) and 416.913(a)(5) state that the certification is a Certificate of Clinical Competence. We propose to make this revision in proposed 20 CFR 404.1502 and 416.902.

Sixth, we propose to revise how we use evidence from medical sources on the AMS list. For most AMS sources, our regulations state the medical source is an AMS for the purpose of establishing a particular kind of impairment(s). Because we use evidence from AMSs for additional purposes, such as determining whose medical opinions we articulate in a determination or decision, we propose to revise our regulations to allow the use of evidence "for impairment(s) of" in order to better describe what AMS status means in our rules. We propose to make this revision to 20 CFR 404.1502(a)(2)(ii)–(7) and 416.902(a)(2)(ii)–(7).

E. Related Revisions to Our Listings

Because we propose to recognize audiologists as AMSs, we also propose to revise our rules to specify what evidence would establish a medically determinable impairment that causes hearing loss that could meet the requirement of a listing in the Listing of Impairments.[74] Under our Special Senses and Speech Listings, we currently require a complete otologic examination by a licensed physician (medical or osteopathic doctor) to establish a medically determinable impairment that causes hearing loss.[75] We propose to remove the word "complete" because we currently specify the information we need in listing 2.00B2b and 102.00B2b, and we expect medical providers to follow professional standards for conducting examinations. We also propose to specify that audiologists, because they would be AMSs, could also perform the otologic examination. We propose to make these revisions in 20 CFR part 404, subpart P, Appendix 1 sections 2.00B for adults and 102.00B for children.

V. Revisions to Our List of Medical Sources Who Can Be MCs and PCs

BBA section 832 states that when there is evidence indicating the existence of a physical impairment in a claim, we may not make an initial

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ISBN.2011_EDITION.pdf; (3) New York, see Education Law Article 139 § 6910 for Nurse Practitioners and Clinical Nurse Specialists, available at *http://www.op.nysed.gov/prof/nurse/article139.htm,* and Article 140 § 79–5.2 for Midwives, available at *http://www.op.nysed.gov/prof/midwife/part79-5.htm;* and (4) Oregon for Clinical Nurse Specialists, see Oregon Rules 851–054–0040, available at *http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_851/851_054.html.*

[67] See, for example, the American Academy of Nurse Practitioners Certification Program, available at *http://www.aanpcert.org/ptistore/control/certs/qualifications.*

[68] Available at *http://www.aacn.nche.edu/education-resources/APRNReport.pdf.*

[69] 20 CFR 404.1513(a)(3) and 416.913(a)(3).

[70] 72 FR 9239 (March 1, 2007).

[71] Act 7376, available at *http://www.legvi.org/vilegsearch/ShowPDF.aspx?num=7376&type=Act,* see also 27 V.I.C. 161(a), available at *http://www.lexisnexis.com/hottopics/vicode.*

[72] See 20 LPRA 544(b)(1), available at *http://www.lexisnexis.com/hottopics/lawsofpuertorico/.*

[73] See POMS DI 22505.004 Establishing the Credentials for Psychologists and School Psychologists Who Do Not Show Their Licensing or Certification Status, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0422505004.*

[74] See 20 CFR 404.1525 and 416.925.

[75] 20 CFR part 404, subpart P, Appendix 1 sections 2.00B2b for adults and 102.00B2b.

disability determination until we have made every reasonable effort to ensure that a qualified physician has completed the medical portion of the case review and any applicable RFC assessment.[76] Similarly, BBA section 832 states that when there is evidence indicating the existence of a mental impairment in a claim, we may not make an initial disability determination until we have made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable RFC assessment.[77] These requirements will apply to how State agency DDSs use MCs and PCs to complete the medical portion of the case review and any applicable RFC assessment(s) at both the initial and reconsideration levels.

To implement BBA section 832, we propose several revisions about who can be MCs and PCs who can complete the medical portion of the case review and any applicable RFC assessment(s).

First, we currently authorize licensed physicians (medical or osteopathic) to be MCs who can complete the medical portion of the case review and any applicable RFC assessment for all physical impairments.[78] We also authorize licensed optometrists, podiatrists, and speech-language pathologists to be MCs who can complete the medical portion of the case review and any applicable residual functional capacity assessment about physical impairments in their scope of practice.[79] To implement BBA section 832, we propose to authorize only licensed physicians to be MCs, who must complete the medical portion of the case review and any applicable RFC assessment for physical impairments in a claim.

Second, when we propose to deny a claim involving mental impairments, we are currently required to make every reasonable effort to ensure that a psychiatrist or psychologist completes the medical portion of the case review and any applicable RFC assessment. In practice psychiatrists and qualified psychologists also typically review claims we propose to allow.[80] Our current regulations define the steps we must take to make every reasonable effort, as prescribed in section 221(h) of the Act. Current 20 CFR 404.1617 and 416.1017 states that if we are unable to obtain the services of a qualified psychologist or psychiatrist after making every reasonable effort, then we authorize an MC who is a physician to complete the medical portion of the case review and any applicable residual functional capacity assessment for mental impairments in a claim.[81] To implement BBA section 832, we propose to make every reasonable effort to ensure that psychiatrists or psychologists complete the medical portion of a case review and any applicable RFC assessment for mental impairments whether we propose to allow or deny a claim.

Third, BBA section 832 requires us to make every reasonable effort to ensure that a qualified physician has completed the medical portion of the case review and any applicable residual functional capacity assessment about physical impairment(s) before we make an initial determination, just as we make every reasonable effort for claims involving mental impairments. To implement BBA section 832, we propose to also make every reasonable effort to have physicians complete the medical portion of the case review and any applicable RFC assessment about physical impairments in a claim.

Fourth, we propose to revise our rules about who can be a PC. BBA section 832 states both psychiatrists and psychologists can make the medical assessment for mental impairments. For clarity, we propose to specify that a psychiatrist, who is a licensed physician, could serve as either an MC or PC. Instead of separately enumerating what constitutes a "qualified" psychologist who can be a PC, we also propose to define a psychologist in the same way we propose in our rules on AMSs in 20 CFR 404.1502(a)(2) and 416.902(a)(2).

We propose to make these revisions to 20 CFR 404.1615–404.1617 and 416.1015–416.1017. Because BBA section 832 becomes effective for determinations made on and after November 2, 2016, we would begin applying these revisions to our MC and PC rules on that date.

VI. Consideration and Articulation of Medical Opinions and Prior Administrative Medical Findings

A. Our Current Rules About Considering Medical Opinions and Administrative Findings of Fact

We consider all evidence in a claim, including medical opinions, when we determine disability.[82] Our current rules explain the process we use to weigh medical opinions and administrative findings of fact.[83] We consider the following factors when we weigh a medical opinion and an administrative finding of fact:

- Examining relationship. Generally, we give more weight to the opinion of a source who has examined a claimant than to the opinion of a source who has not examined a claimant.[84]
- Treatment relationship. Generally, we give more weight to opinions from a claimant's treating sources because these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of a claimant's medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. Within the treatment relationship factor, we also consider these sub-factors:

1. Length of the treatment relationship and the frequency of examination. Generally, the longer a treating source has treated a claimant and the more times a treating source has seen a claimant, the more weight we will give to the source's medical opinion. When a treating source has seen a claimant a number of times and long enough to have obtained a longitudinal picture of a claimant's impairment, we will give the source's opinion more weight than we would give it if it were from a nontreating source.[85]

2. Nature and extent of the treatment relationship. Generally, the more knowledge a treating source has about a claimant's impairment(s) the more weight we will give to the source's medical opinion. We will look at the treatment the source has provided and the kinds and extent of examinations and testing the source has performed or ordered from specialists and independent laboratories. For example, if an ophthalmologist notices that a claimant complained of neck pain during an eye examination, we will consider his or her opinion with respect to the neck pain, but we will give it less weight than that of another physician who has treated the claimant for the neck pain. When the treating source has reasonable knowledge of the claimant's impairment(s), we will give the source's opinion more weight than we would

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[76] Pub, L, 114–74, § 832, Stat. 584, 613.

[77] Id.

[78] 20 CFR 404.1616(b) and 416.1016(b).

[79] 20 CFR 404.1616(b) and (c) and 416.1016(b) and (c).

[80] 20 CFR 404.1615(d), 404.1616(d), 416.1015(d), and 416.1016(d).

[81] Id.

[82] 42 U.S.C. 423(d)(5)(B) and 1382c(H)(i). See also 20 CFR 404.1520(a)(3), 404.1527(b), 416.920(a)(3), and 416.927(b).

[83] See 20 CFR 404.1527(c) and 416.927(c).

[84] 20 CFR 404.1527(c)(1) and 416.927(c)(1).

[85] 20 CFR 404.1527(c)(2)–(c)(2)(i) and 416.927(c)(2)–(c)(2)(i).

give it if it were from a nontreating source.[86]

- Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because non-examining sources have no examining or treating relationship with a claimant, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions. We will evaluate the degree to which these opinions consider all of the pertinent evidence in a claim, including opinions of treating and other examining sources.[87]
- Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.[88]
- Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.[89]
- Other factors. When we consider how much weight to give a medical opinion, we will also consider any factors brought to our attention, or of which we are aware, that tend to support or contradict the opinion. For example, the amount of understanding of our disability programs and their evidentiary requirements that an AMS has, regardless of the source of that understanding, and the extent to which an AMS is familiar with the other information in a case record are relevant factors that we will consider in deciding the weight to give to a medical opinion.[90]

In addition to weighing all medical opinions and administrative findings of fact with these factors, our rules include special policies for weighing medical opinions from treating sources. We currently define a treating source as an individual's own physician, psychologist, or other AMS who provides, or has provided, medical treatment or evaluation resulting from an ongoing treatment relationship. Generally, we consider a relationship ongoing if the AMS has seen an individual with a frequency consistent with the accepted medical practice for the type of treatment or evaluation required for a specific medical condition(s). We do not consider an AMS to be a treating source if the relationship with the individual is based solely on that individual's need to obtain an assessment or evaluation in support of a disability claim. In such a case, we consider the AMS to be a nontreating source.[91]

Under our current rules, a treating source's medical opinion about the nature and severity of a claimant's impairment(s) is entitled to controlling weight if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record.[92] Stated another way, when we find the supportability and consistency factors persuasive for a treating source, we will generally adopt the treating source's opinion about the nature and severity of a claimant's impairment(s). When we do not give controlling weight to a treating source's medical opinion because it is not well-supported or is inconsistent with other substantial evidence in the case record, we will evaluate the medical opinion using all of the factors listed above.

B. Our Current Rules About Articulating How We Consider Medical Opinions and Administrative Findings of Fact

Once we consider all medical opinions and administrative findings of fact in the record, we articulate how we consider the following medical opinions and administrative findings of fact in the notice of determination or decision:

1. If we give controlling weight to a treating source's medical opinion, we articulate how we considered only that medical opinion by giving good reasons for the weight we give it.[93]
2. If we do not give controlling weight to a treating source's medical opinion, not only do we give good reasons for the weight we give to the treating source's opinion, we also articulate how we considered medical opinions from all AMSs and administrative findings of fact.[94]
3. If we do not give controlling weight to a treating source's medical opinion and we find that an opinion from a medical source who is not an AMS is more persuasive than the AMS medical opinions and administrative findings of fact, in addition to the requirements listed above, we also articulate how we considered that non-AMS medical opinion.[95]
4. The adjudicator generally *should* explain the weight given to opinions from other sources when such opinions may have an effect on the outcome of the case.[96]

There is no clear requirement about which factors we must discuss in a determination or decision.

C. History of the Controlling Weight Rule

We based our policies about giving certain treating source opinions controlling weight on the Act's requirement that we make every reasonable effort to obtain from the individual's treating physician (or other treating healthcare provider) all medical evidence necessary to make a disability determination before evaluating medical evidence from a consultative source.[97] Although the Act requires us to consider a treating medical source's evidence, it does not specify how we should evaluate that evidence. Instead, the Act gives us the authority to adopt reasonable and proper rules, regulate and provide for the nature and extent of proof and evidence for disability claims.[98] As the United States Supreme Court has emphasized, we have exceptionally broad statutory authority to establish rules about evidence.[99]

Responding to certain court decisions,[100] in 1991 we issued final rules to create a uniform national policy about how to consider medical opinions from treating physicians.[101] We stated that treating sources' evidence tends to have a special, intrinsic value because treating sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of a claimant's medical impairment(s) and may bring a unique perspective to the medical evidence.[102] We also stated that, because medical opinions always have a subjective component and the effects of medical conditions on individuals vary widely, as no two cases are exactly alike, it is not possible to create rules that prescribe the weight to be given to each piece of evidence we may take into consideration. The 1991 final rule also recognized that the weighing of any evidence, including medical opinions, is a process of comparing the intrinsic value, persuasiveness, and internal consistency of each piece of evidence together to determine which findings of fact the evidence best supports.[103]

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[86] 20 CFR 404.1527(c)(2)–(c)(2)(ii) and 416.927(c)(2)–(c)(2)(ii).

[87] 20 CFR 404.1527(c)(3) and 416.927(c)(3).

[88] 20 CFR 404.1527(c)(4) and 416.927(c)(4).

[89] 20 CFR 404.1527(c)(5) and 416.927(c)(5).

[90] 20 CFR 404.1527(c)(6) and 416.927(c)(6).

[91] 20 CFR 404.1502 and 416.902.

[92] 20 CFR 404.1527(c)(2) and 416.927(c)(2).

[93] 20 CFR 404.1527(c)(2) and 416.927(c)(2).

[94] 20 CFR 404.1527(c) and (e) and 416.927(c) and (e).

[95] SSR 06–03p.

[96] Id.

[97] 42 U.S.C. 423(d)(5)(B) and 1382c(H)(i).

[98] 42 U.S.C. 405(a).

[99] *Bowen* v. *Yuckert*, 482 U.S. 137, 145 (1987).

[100] See, *e.g.*, *Schisler* v. *Bowen*, 851 F.2d 43, 44 (2d Cir. 1988).

[101] 56 FR 36932 (Aug. 1, 1991).

[102] 56 FR at 36934 and 36961.

We have revised our policies about weighing medical opinions from treating sources several times since the 1991 final rules. We expanded the definition of who can be a treating source to allow any AMS to be a treating source and expanded the list of AMSs to include osteopaths, optometrists, podiatrists, and speech-language pathologists.[104] By expanding the AMS list, it became more common for claims to include medical opinions from multiple treating sources. In addition, claimants frequently submitted opinions from medical sources who were not AMSs and not considered treating sources under our rules.

We also issued two SSRs to help adjudicators evaluate multiple medical opinions and opinions from sources who were not AMSs. We issued SSR 96–2p to clarify how we apply this policy and to explain terms in our regulations used in evaluating whether treating source medical opinions are entitled to controlling weight.[105] We emphasized several policies, including:

- A case cannot be decided by relying on a medical opinion if the medical source making that opinion does not provide reasonable support for the opinion.
- Controlling weight may be given only to medical opinions that are about the nature and severity of an individual's impairment(s).
- Controlling weight may not be given to a treating source's medical opinion unless the opinion is both well supported by medically acceptable clinical and laboratory diagnostic techniques (clinical signs and laboratory findings) and not inconsistent with the other substantial evidence in the case record.
- To give a treating source's opinion controlling weight means to adopt it.
- A finding that a treating source's medical opinion is not entitled to controlling weight does not mean that we reject the opinion. It may still be entitled to deference and an adjudicator may adopt it.

We recognized a need to provide additional policy guidance because our rules did not explicitly tell our adjudicators how to consider the growing prevalence of opinions from claimants' medical sources who did not qualify as treating sources under our regulations. We stated this additional policy guidance in SSR 06–03p.[106] SSR 06–03p included the following guidance:

- We may use evidence from medical sources who are not AMSs to show the severity of an impairment(s) and how it affects a claimant's ability to function, but we may not use evidence from medical sources who are not AMSs to establish the existence of an impairment(s) at step 2 of the sequential evaluation process.
- We should evaluate opinions from non-AMS sources using the same criteria used to evaluate AMS opinions.
- We generally should explain the weight given to opinions from non-AMS sources when such opinions may have an effect on the outcome of the case.
- We will explain how we considered an opinion from a non-AMS source when it is entitled to greater weight than a medical opinion from a treating source.

D. Experience With the Current Rules for Weighing Medical Opinions

The current policies for weighing medical opinions have resulted in several adjudicative issues.

1. The Number of Findings Required

Our current policies require our adjudicators to make a large number of findings that need to be included in their determinations and decisions. Claims often contain evidence from a great number of medical sources, and each medical source may express several medical opinions.[107] Some claim files contain opinions from ten or more medical sources. Our current rules require adjudicators to articulate the weight given to most of these opinions using the factors listed in 20 CFR 404.1527(c) and 416.927(c). Often, these medical opinions differ, and Federal courts have remanded cases citing failure to weigh properly one of the many medical opinions in a record.

2. Federal Court Perspectives

Our rules specify that a treating source's opinion is entitled to controlling weight only if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. Our rules also require us to give good reasons in our notice of determination or decision for the weight we give a treating source's opinion.[108]

However, some courts have questioned ALJs' articulated reasons for not giving treating source opinions controlling weight. They have offered different reasons for rejecting ALJs' articulated explanations for not giving controlling weight to treating source opinions, such as: The treating source opinion is more recent;[109] an ALJ may only discredit claimants' reported pain symptoms using a heightened evidentiary standard;[110] an ALJ may not rely upon prescribed conservative treatment to indicate less severe restrictions.[111]

In effect, these reviewing courts have focused more on whether we sufficiently articulated the weight we gave treating source opinions rather than on whether substantial evidence supports the Commissioner's final decision. As the ACUS Final Report explains, these courts, in reviewing final agency decisions, are reweighing evidence instead of applying the substantial evidence standard of review, which is intended to be highly deferential standard to us.[112]

Some courts have recognized the challenges the treating source rule creates for us during judicial review. The United States Court of Appeals for the Seventh Circuit has specifically called on us to reexamine the treating physician rule. That court questioned its usefulness and noted that "the weight properly to be given to testimony or other evidence of a treating physician depends on circumstances."[113]

While the Supreme Court has not directly addressed this issue, its unanimous holding in *Black & Decker Disability Plan* v. *Nord,*[114] which overturned the Ninth Circuit's attempt to apply the treating physician rule to a different Federal statute, offers insight. The Court cautioned that that the treating physician rule's built-in evidentiary bias in favor of treating physicians may influence treating sources to favor a finding of disabled.[115] ACUS commented:

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[103] Id. at 36934–36935.

[104] Medical and Other Evidence of Your Impairments and Definition of Medical Consultant, 65 FR 34952 (June 1, 2000); Optometrists as "Accepted Medical Sources" to Establish a Medically Determinable Impairment, 72 FR 9239 (March 1, 2007).

[105] SSR 96–2p: Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions, 61 FR 34490 (July 2, 1996).

[106] SSR 06–03p: Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not "Acceptable Medical Sources" in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies, 71 FR 45593 (Aug. 9, 2006).

[107] See ACUS Final Report at 14.

[108] 20 CFR 404.1527(c)(2) and 416.927(c)(2).

[109] For example, see *Winters* v. *Barnhart,* 153 Fed. Appx. 846 (3d Cir. 2005).

[110] For example, see *Smolen* v. *Chater,* 80 F.3d 1273, 1281 (9th Cir. 1996).

[111] For example, see *Santiago* v. *Barnhart,* 386 F. Supp. 2d 20 (D.P.R. 2005).

[112] ACUS Final Report at 23.

[113] *Hofslien* v. *Barnhart,* 439 F.3d 375, 377 (7th Cir. 2006).

[114] 538 U.S. 822, 832 (2003).

"The cautionary note sounded by the Supreme Court in *Black & Decker* applies as well, it would seem, to Social Security's disability benefits programs. Indeed, as detailed in earlier parts of this report, our legal and empirical assessment of SSA's treating physician rule suggests that the rule's 'routine deference' to treating physicians may no longer be warranted."[116]

3. Ninth Circuit's Credit-as-True Rule

While courts in most circuits typically remand claims to us for further adjudication when they find we erred by not giving controlling weight to treating source opinions, the Ninth Circuit uses a "credit-as-true" rule, which sometimes results in it ordering us to award benefits instead of remanding cases.[117] The Ninth Circuit combines the treating physician rule with its credit-as-true rule in cases in which the court finds:

1. The ALJ failed to provide legally sufficient reasons for rejecting the treating source opinion;
2. there are no other issues that must be resolved before a determination of disability can be made; and
3. it is clear from the record that the ALJ would be required to find the claimant disabled if he or she credited the treating source opinion as true.[118]

Application of the credit-as-true rule prevents us from reconsidering the evidence in the record as a whole and correcting any errors that may exist, effectively supplanting the judgment of our decision makers.

4. Difficulty Determining Treating Source Status Due to the Changing Nature of the Primary Healthcare System

We stated in the 1991 final rules that our basis for creating the treating physician rule was the presumption that a claimant's sole treating physician generally has the longitudinal knowledge and a unique perspective about his or her patient's impairments that objective medical evidence alone cannot provide.

However, changes in the national healthcare workforce and in the manner in which many people now receive primary medical care make this presumption less persuasive than when we issued those rules 25 years ago.[119]

One reason our current formulation needs to be revised is that many claimants receive healthcare from coordinated and managed care organizations instead of from one treating AMS. Claimants typically visit multiple medical professionals (such as primary physicians, specialists, and nurse practitioners) in a variety of medical settings (such as managed care and specialty clinics, hospitals, ambulatory care centers, and various public healthcare centers) for their healthcare needs, and less frequently develop a sustained relationship with one treating physician. Similarly, the specialized nature of healthcare delivery means that medical sources are less familiar with claimants' entire medical situation. This is more pronounced for patients with chronic impairments who are often treated by a team of medical sources instead of by one treating medical source. Additionally, many claimants switch medical providers over time to match changes in insurance coverage.[120]

As a result of the current complex healthcare delivery model, adjudicators and courts have attempted to understand what level of medical care would qualify a medical source as a treating source under our current rules. The main source of divergence originates because our rules do not address how to weigh more than one treating source's medical opinion simultaneously. In response, several courts have created varying standards of how we must address opinions from multiple treating sources. Some courts have even considered the following kinds of medical sources to be treating sources:

- Physicians "with relatively sporadic treatment relationships" to claimants;[121]
- all members of a healthcare team;[122] and
- a physician who coordinated care among medical sources but who did not personally examine the claimant.[123]

However, these approaches move our adjudication away from looking at the content of the medical opinions and towards weighing treatment relationships against each other. About these kinds of court holdings, ACUS stated:

> These cases reveal that, from the courts' perspective, the distinction between treating and other physicians has blurred. The expansion of treating physician status runs the risk of undermining the rule itself. The original idea that the persuasiveness of medical opinion should turn more on the frequency of visits and depth of professional judgment underlying the medical opinion has gotten lost.
>
> This blurring of professional lines—between treating physicians and other medical professionals—is, moreover, increasingly reflected not just in judicial opinions, but in medical offices as well. Indeed, the treating physician business has expanded with new services to include doctors who see patients in high volume . . . . This "devaluation" of the physician-patient relationship calls into further question whether any deference—let alone "controlling weight"—should be afforded to the opinions of this type of medical practitioner.[124]

5. Legal Scholars' Perspectives on the Treating Physician Rule

Some legal scholars also disfavor the treating physician rule. For example, two scholars argue that "[t]he substantial evidence standard of review should mean the same thing under the Social Security Act as it does under the APA or other organic statutes," but that this rule influences courts to review our decisions differently.[125]

E. Proposed Revisions About How To Consider Medical Opinions and Prior Administrative Medical Findings

To address the concerns discussed above, we propose several revisions to how we consider medical opinions and prior administrative medical findings. First, we would no longer give a specific weight to medical opinions and prior administrative medical findings; this includes giving controlling weight to medical opinions from treating sources. Instead, we would consider the persuasiveness of medical opinions and prior administrative medical findings using the factors described below. Second, we propose to consider supportability and consistency as the most important factors. Finally, we propose to reorganize the factors to: (1) List the supportability and consistency factors first, (2) include a "relationship with the claimant" factor that combines the content of the current examining relationship and treatment relationship factors, (3) list individually the three different factors currently combined as other factors, and (4) restate the factors using consistent sentence structure.

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[115] Id. at 832; see also *Hofslien* v. *Barnhart*, 439 F.3d at 376 noting that a treating physician may bend over backwards to assist a patient in obtaining benefits); *Stephens* v. *Heckler*, 766 F.2d 284, 289 (7th Cir. 1985) (noting that a treating physician may want to do a favor for a friend and client and so may too quickly find disability and might also lack appreciation of how one case compares with other related cases, whereas a consulting physician may bring both impartiality and expertise).

[116] ACUS Final Report at 43.

[117] For example, see *Garrison* v. *Colvin*, 759 F.3d 995, 1021–1022 (9th Cir. 2014).

[118] Id. For example, see *Smolen* v. *Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996).

[119] See ACUS Final Report at 25–27 and footnotes.

[120] See ACUS Final Report at footnotes 220 and 221.

[121] ACUS Final Report at 34. For example, see *Johnson* v. *Astrue*, 597 F.3d 409, 411 (1st Cir. 2009).

[122] For example, see *Shontos* v. *Barnhart*, 328 F.3d 418, 426 (8th Cir. 2003).

[123] For example, see *Benton* v. *Barnhart*, 331 F.3d 1030 (9th Cir. 2003).

[124] ACUS Final Report at 35 (internal citations omitted).

[125] Richard E. Levy & Robert L. Glicksman, *Agency-Specific Precedents*, 89 TEX. L. REV. 499, 546 (2011); see also Richard Pierce, Jr., Petition for Rulemaking before the Social Security Administration, July 2, 2012, available at *www.regulations.gov* by searching under Docket SSA–2012–0035.

First, we would consider the persuasiveness of medical opinions and prior administrative medical findings from all medical sources equally using the factors discussed below. We would not defer or give any specific evidentiary weight, including controlling weight, to any prior administrative medical finding or medical opinion, including from an individual's own healthcare providers. We would add this in proposed new 20 CFR 404.1520c(a) and 416.920c(a).

We also propose to focus on the persuasiveness of medical opinions and prior administrative medical findings instead of the weight of an opinion. We always strive to make our regulations as clear as possible; therefore, we are agreeing with an ACUS recommendation to revise the regulations to avoid using terms or phrases that have different meanings in related contexts.[126] Our current rules use the terms "weigh" or "weight" in several different ways: (1) As a synonym for considering all evidence generally,[127] (2) as a synonym for persuasiveness,[128] and (3) as part of our additional evidence standard for review used at the AC,[129] and during CDRs.[130] In addition to proposing to use the term "persuasive" instead of "weight" for medical opinions in 20 CFR 404.1520c and 416.920c, we also propose to use the term "consider" instead of "weigh" in 20 CFR 404.1520b and 416.920b. We would retain the current standards for AC review and CDRs.

Next, to rely more upon the content and less on the source of medical opinions and prior administrative medical findings, we propose to emphasize supportability and consistency as the most important factors for considering the value and persuasiveness of medical opinions and prior administrative medical findings. The supportability and consistency factors are the two factors that focus upon the objective medical evidence and medical reports supporting a medical opinion or prior administrative medical finding.

These two factors are also the factors we evaluate when assigning controlling weight under our current rules.[131] If a medical opinion or prior administrative medical finding is both well-supported and consistent with the other evidence in the case record, we typically find that it is persuasive. Under the proposed change, adjudicators would still consider the value of the medical opinion or prior administrative medical finding to the issues in the claim.

Additionally, we propose several revisions to how we list and define the factors considering medical opinion and administrative finding of fact. The most important factors are supportability and consistency; therefore, we propose to list them first. We propose to list the remaining factors after the supportability and consistency factors in an order similar to how they appear in our current rules.

We also propose to merge the current examining relationship and treatment relationship factors into one factor called "relationship with the claimant" because they both describe aspects of the relationship between a claimant and medical source. The proposed factor called "relationship with the claimant" would list the following subfactors separately: Examining relationship, length of the treatment relationship, frequency of examination, purpose of treatment relationship, and extent of the treatment relationship.

Similarly, we propose to list separately the three factors we currently identify as other factors: (1) Familiarity with the entire record, (2) understanding of our policy, and (3) any other factor brought to our attention. Finally, we propose to restate the factors using consistent sentence structure for clarity.

We would make these revisions in the proposed new 20 CFR 404.1520c and 416.920c.

F. Proposed Revisions About How To Articulate How We Consider Medical Opinions and Prior Administrative Medical Findings

We propose to articulate in our determinations and decisions how we consider medical opinions and prior administrative medical findings at the source level instead of by the date of treatment and to focus more on the content than on the source of this evidence. We also propose to focus on the value and persuasiveness of medical opinions and prior administrative medical findings instead of assigning a specific weight. We propose to add the articulation policies in SSR 06–03p to our regulations and remove our policies about articulating medical opinions from treating sources from our rules. The proposed revisions would make our rules easier to understand and apply. We will continue to consider all evidence we receive in a claim.

First, we propose to articulate together, instead of individually, all medical opinions and prior administrative medical findings made by a medical source because our administrative experience shows that adjudicators, claimants, representatives, and courts tend to evaluate all of a medical source's evidence together. Additionally, because many claims have voluminous case records containing many types of evidence from different sources, it is not administratively feasible for us to articulate in each determination or decision how we considered all of the factors for all of the medical opinions and prior administrative medical findings. Therefore, we propose that our adjudicators articulate separately how they considered multiple medical opinions or prior administrative medical findings from one medical source.

Second, we propose to simplify our rules about which medical sources' medical opinions we would need to articulate. Because many claims have voluminous case records, it is not administratively feasible for us to articulate in determinations or decisions how we considered all medical sources' medical opinions in a claim. Our current policy requires us to articulate how we considered all AMS medical opinions when controlling weight does not apply, but it does not require us to always articulate how we considered medical opinions from medical sources who are not AMSs.

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[126] ACUS Final Report at 56.

[127] See 20 CFR 404.1520b and 416.920b. This term applies to all evidence, not only medical opinions.

[128] See 20 CFR 404.1527(c) and 416.927(c). See also 56 FR 36931, 36935–36: "[B]ecause opinions always have a subjective component, because the effects of medical conditions on individuals vary so widely, and because no two cases are ever exactly alike, it is not possible to create rules that prescribe the weight to be given to each piece of evidence that we may take into consideration in every case. [The final rule] also recognizes that the weighing of any evidence, including opinions, is a process of comparing the intrinsic value, persuasiveness, and internal consistency of each piece of evidence together to determine which findings of fact are best supported by all of the evidence."

[129] See 20 CFR 404.970(b) and 416.1470(b).

[130] See 20 CFR 404.1579(b)(4), 404.1594(b)(6), 416.979(b)(4), 416.994(b)(1)(vi), and 416.994a(a)(2).

[131] See 20 CFR 404.1527(c)(2) and 416.927(c)(2).

Due to the advanced education and training received by AMSs, their medical opinions may have presumptive value in describing a claimant's functional limitations and abilities. Therefore, we propose to require our adjudicators to articulate how persuasive they find all AMS medical opinions.

Similarly, because all MCs and PCs are AMSs, we would require our adjudicators to articulate how persuasive they find the prior administrative medical findings in the case record. This requirement is similar to our current policy in SSR 06–03p.

Under these proposed rules, if an adjudicator finds that a medical opinion(s) from a medical source who is not an AMS is more valuable and persuasive than all of the AMS medical opinions and prior administrative medical findings in the claim, then the adjudicator would articulate how he or she considered that medical opinion(s). For example, if a physical therapist submits evidence indicating functional limitations supported by objective medical evidence that is consistent with the other evidence in the claim, the adjudicator would articulate in the determination or decisions how he or she considered that evidence if it is more valuable and persuasive than the all of the other medical opinions and prior administrative medical findings in the claim.

This proposed rule also gives adjudicators the discretion of whether to discuss non-AMS medical opinions they find are not valuable or persuasive. For example, if a physical therapist submits a form indicating functional limitations without sufficient support or that are not consistent with the other evidence in the claim, the adjudicator would have the discretion about whether to articulate in the determination or decisions how he or she considered that evidence.

Third, we propose to specify which of the factors we must articulate in our determinations and decisions. Due to voluminous case records in some cases, it is not always administratively feasible for us to articulate how we considered each of the factors for all of the medical opinions and prior administrative medical findings in a claim while still offering timely customer service to our claimants. Instead, for AMS medical opinions and prior administrative medical findings, we would explain, in the determination or decision, how we considered the factors of supportability and consistency because those are the most important factors.

Generally, under these proposed rules, we would have discretion to articulate how we consider the other factors. We would only be required to explain how we consider other applicable factors when we find that two or more AMS' medical opinions or prior administrative medical findings about the same issue are not the same but are both equally well-supported and consistent with the other evidence in the record. This situation may arise when the medical sources are discussing different impairments.

Similarly, if we find that a non-AMS medical opinion(s) is well-supported and consistent with the other evidence in the record, as well as more valuable and persuasive than all AMS medical opinions and prior administrative medical findings, we would articulate how we consider the factors of supportability, consistency, and, if any, the other most persuasive factors.

We would add these revisions in the proposed new 20 CFR 404.1520c and 416.920c.

VII. Other Revisions Related to Treating Sources

A. Background

Our current regulations use the terms treating source and nontreating source in several sections. We consider a nontreating source to be a physician, psychologist, or other AMS who has examined an individual but does not, or did not, have an ongoing treatment relationship with that individual. The term includes an AMS who is a consultative examiner for us, when the consultative examiner is not the individual's treating source.[132]

In addition to our rules about weighing medical opinions, our current rules include treating sources in two other contexts. First, we state that a claimant's treating source will be the preferred source of a consultative examination when, in our judgment, the treating source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports.[133] We also state that we will use a medical source other than the treating source for a consultative examination in other situations, such as if there are conflicts or inconsistencies in a claim that cannot be resolved by going back to the treating source.[134]

The other context in which we use the term treating source is when a claimant must follow treatment prescribed by his or her physician if the treatment can restore the claimant's ability to work.[135] Our subregulatory policy recognizes prescribed treatment from a claimant's treating sources.

B. Proposed Revisions

The current healthcare delivery model involves many types of medical sources that are not currently AMSs and that we do not consider treating sources under our rules. A challenge has been the difference between our policy-specific intent for the term "treating source" and its colloquial use to refer to any medical source who has treated an individual.

We are proposing to align our rules to focus more on the content of medical evidence than the source of that evidence. We propose to consider all medical sources that a claimant identifies as his or her medical sources for our rules and not use the term "treating source" in our regulations at all. Consequently, we propose to revise our rules to use the phrase "your medical source(s)" to refer to whichever medical sources a claimant chooses to use.

First, we propose to revise our regulations at 20 CFR 404.1530(a) and 416.930(a) to state that a claimant must follow treatment by his or her medical source(s) if this treatment can restore his or her ability to work.

Second, we propose to revise our rules to state that our preference for consultative examinations will be any of a claimant's medical sources. We would continue to use the existing standards to decide whether to select the claimant's medical source for the consultative examinations, such as whether the medical source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports. We propose to make this revision to 20 CFR 404.1519h, 404.1519i, 416.919h, and 416.919i. We also propose to delete the final sentence of current 20 CFR 404.1519h and 416.919h that discusses which medical source may perform supplemental tests because this is already encompassed in the prior sentence's use of the term "test(s)."

Finally, because we would no longer use the terms treating source and nontreating source in our regulations, we propose to delete the definitions for these terms from our regulations at 20 CFR 404.1502 and 416.902.

VIII. Reorganizing Our Opinion Evidence Regulations

Our current regulations about opinion evidence are scattered throughout 20

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[132] See 20 CFR 404.1502 and 416.902.

[133] 20 CFR 404.1519h and 416.919h.

[134] 20 CFR 404.1519i and 416.919i.

[135] 20 CFR 404.1530 and 416.930.

CFR part 404 subpart P and part 416 subpart I. As part of our proposal to simplify our opinion evidence regulations to make them easier to understand and use, we are proposing to reorganize several sections and rename some section headings in our regulations. The proposed reorganization would combine similar topics now in separate sections into one section, place sections about how we weigh medical opinions and how we consider evidence next to each other, and add a section about establishing an impairment(s) at step 2 of the sequential evaluation process.

For ease of use, the following are distribution and derivation tables for 20 CFR part 404 subpart P and part 416 subpart I:

A. DISTRIBUTION TABLE

Current section	Proposed section
404.1501–404.1506	404.1501–404.1506.
404.1508	404.1521.
404.1509–404.1511	404.1509–404.1511.
404.1512(a)	404.1512(a)(1).
404.1512(b)–(b)(1)(iv)	404.1513(a)–(a)(4).
404.1512(b)(1)(v)	404.1520b(c)(2).
404.1512(b)(1)(vi)–(viii)	404.1513(a)(5)–(a)(5)(vi).
404.1512(b)(2)–(b)(2)(iv)	404.1513(b)–(b)(2).
404.1512(c)–(c)(7)	404.1512(a)(1)–(a)(1)(vii).
404.1512(d)–(f)	404.1512(b)(1)–(b)(3).
404.1513(a)	404.1502(a).
404.1513(b)–(b)(2)	404.1513(a)–(a)(2).
404.1513(c)–(c)(2)	Remove.
404.1513(d)–(d)(4)	404.1513(a)(4).
404.1513(e)–(e)(3)	404.1512(a)(2)–(a)(2)(iii).
404.1514–404.1520b	404.1514–404.1520b.
404.1521	404.1522.
404.1522	404.1523(a) and (b).
404.1523	404.1523(c).
404.1525–404.1526	404.1525–404.1526.
404.1527(a)(1)	Remove.
404.1527(a)(2)	404.1513(a)(3).
404.1527(b)	404.1527(b).
404.1527(c)–(c)(6)	404.1520c(b)–(b)(7) and 404.1527(c)–(c)(6).
404.1527(d)–(d)(3)	404.1520b(c)(3)–(c)(3)(vii) and 404.1527(d)–(d)(3).
404.1527(e)–(e)(3)	404.1513(b)(3) and 404.1513a.
404.1528	404.1502.
404.1529—Appendix 2 to Subpart P of Part 404	404.1529—Appendix 2 to Subpart P of Part 404.
416.901–416.906	416.901–416.906.
416.908	416.921.
416.909–416.911	416.909–416.911.
416.912(a)	416.912(a)(1).
404.912(b)–(b)(1)(iv)	404.913(a)–(a)(4).
404.912(b)(1)(v)	404.920b(c)(2).
404.912(b)(1)(vi)–(viii)	404.913(a)(5)–(a)(5)(vi).
416.912(b)(2)–(b)(2)(iv)	416.913(b)–(b)(2).
416.912(c)–(c)(7)	416.912(a)(1)–(a)(1)(vii).
416.912(d)–(f)	416.912(b)(1)–(b)(3).
416.913(a)	416.902(a).
416.913(b)–(b)(2)	416.913(a)–(a)(2).
416.913(c)–(c)(2)	Remove.
416.913(d)–(d)(4)	416.913(a)(4).
416.913(e)–(e)(3)	416.912(a)(2)–(a)(2)(iii).
416.913(f)	416.912(a)(3).
416.914–416.920b	416.914–416.920b.
416.923	416.923(c).
416.925–416.926	416.925–416.926.
416.927(a)(1)	Remove.
416.927(a)(2)	416.913(a)(3).
416.927(b)	416.927(b).
416.927(c)–(c)(6)	416.920c(b)–(b)(7) and 416.927(c)–(c)(6).
416.927(d)–(d)(3)	416.920b(c)(3)–(c)(3)(vii) and 416.927(d)–(d)(3).
416.927(e)–(e)(3)	416.913(b)(3) and 416.913a.
416.928	416.902.
416.929–416.999d	416.929–416.999d.

B. DERIVATION TABLE

Proposed section	Current section
404.1501	404.1501.
404.1502(a)	404.1513(a).
404.1502(b)–404.1503a	404.1502–404.1503a and 404.1528.

B. DERIVATION TABLE—Continued

Proposed section	Current section
404.1504–404.1507	404.1504–404.1507.
[Reserved]	404.1508.
404.1509–404.1511	404.1509–404.1511.
404.1512(a)(1)	404.1512(a).
404.1512(a)(1)–(a)(1)(vii)	404.1512(c)–(c)(7).
404.1512(a)(2)–(a)(2)(iii)	404.1513(e)–(e)(3).
404.1512(b)(1)–(b)(3)	404.1512(d)–(f).
404.1513(a)–(a)(2)	404.1512(b)(1)(i)–(b)(1)(ii).
404.1513(a)(3)–(a)(3)(iv)	404.1527(a)(2).
404.1513(a)(4)	404.1512(b)(1)(iii)–(iv) and 404.1513(d)–(d)(4).
404.1513(a)(5)–(a)(5)(v)	404.1512(b)–(b)(1)(viii).
404.1513(b)–(b)(2)	404.1512(b)(2)–(b)(2)(iv).
404.1513a	404.1527(e)–(e)(3).
404.1514–404.1520b	404.1514–404.1520b.
404.1520b(c)(1)	404.1512(b)(5).
404.1520b(c)(2)	404.1527(d)–(d)(3).
404.1520b(c)(3)	404.1527(e)(1)(i).
404.1520c(b)–(b)(7)	404.1527(c)–(c)(6).
404.1521	404.1508.
404.1522	404.1521.
404.1523(a) and (b)	404.1522.
404.1523(c)	404.1523.
404.1525–404.1526	404.1525–404.1526.
404.1527	404.1527.
[Reserved]	404.1528.
404.1529—Appendix 2 to Subpart P of Part 404	404.1529—Appendix 2 to Subpart P of Part 404.
416.901	416.901.
416.902(a)	416.913(a).
416.902(b)–416.903a	416.902–416.903a and 416.928.
416.904–416.907	416.904–416.907.
[Reserved]	416.908.
416.909–416.911	416.909–416.911.
416.912(a)(1)	416.912(a).
416.912(a)(1)–(a)(1)(vii)	416.912(c)–(c)(7).
416.912(a)(2)–(a)(2)(iii)	416.913(e)–(e)(3).
416.912(a)(3)	416.913(f).
416.912(b)(1)–(b)(3)	416.912(d)–(f).
416.913(a)–(a)(2)	416.912(b)(1)(i)–(b)(1)(ii).
416.913(a)(3)–(a)(3)(iv)	416.927(a)(2).
416.913(a)(4)	416.912(b)(1)(iii)–(iv) and 416.913(d)–(d)(4).
416.913(a)(5)–(a)(5)(v)	416.912(b)–(b)(1)(viii).
416.913(b)–(b)(2)	416.912(b)(2)–(b)(2)(iv).
416.913(b)(2)	New.
416.913a	416.927(e)–(e)(3).
416.914–416.920b	416.914–416.920b.
416.920b(c)(1)	416.912(b)(5).
416.920b(c)(2)	416.927(d)–(d)(3).
416.920b(c)(3)	416.927(e)(1)(i).
416.920c(b)–(b)(7)	416.927(c)–(c)(6).
416.921	416.908.
416.922	416.921.
416.923(a) and (b)	416.922.
416.923(c)	416.923.
416.925–416.926	416.925–416.926.
416.927	416.927.
[Reserved]	416.928.
416.929–416.999d	416.928–416.999d.

We also propose to reorganize the current text within 20 CFR 404.1520b and 416.920b for readability. Finally, we propose to make a number of revisions throughout the proposed regulatory sections to use plain language.

IX. Effect Upon Certain Social Security Rulings

Upon publication of final rules, we would also rescind the following SSRs that would be inconsistent or unnecessarily duplicative with our new rules:

- SSR 96–2p: Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions.[136]
- SSR 96–5p: Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.[137]
- SSR 96–6p: Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law

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[136] 61 FR 34490 (July 2, 1996).

[137] 61 FR 34471 (July 2, 1996).

Judge and Appeals Council Levels of Administrative Review; Medical Equivalence.[138]

- SSR 06–03p: Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not "Acceptable Medical Sources" in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies.[139]

In addition, because we would rescind SSR 96–6p, we intend to publish a new SSR that would discuss certain aspects of how ALJs and the AC must obtain evidence sufficient to make a finding of medical equivalence.

X. Proposed Implementation Process

We propose to implement all of the revisions discussed above on the effective date of the final rule, with the exception of those revisions specified below. The revisions that we propose to implement in all claims as of the effective date of the final rule respond fully to the mandate of BBA section 832 medical review requirements, clarify current policy, or are not substantially related to the policies about evaluating medical opinions.

However, a claimant has the burden of proving to us that he or she is blind or disabled, and we are aware that claimants whose claims are pending administrative review may have requested and obtained treating and other medical source opinions based on our policy set forth in current 20 CFR 404.1527 and 416.927. Considering this fact, we propose to continue to use our current rules about how we consider medical source opinion evidence, including the controlling weight policy for treating sources, for claims that are filed before the effective date of the final rule. Using our current rules about how we consider medical source opinions for claims filed before the effective date of the final rule will also enable us to apply a uniform standard to evaluate medical source opinion evidence throughout the administrative review process.

Specifically, we propose to continue to use the following current rules in claims that are filed before the effective date of the final rule:

- The current definitions of a medical opinion and a treating source in current 20 CFR 404.1502, 404.1527(a), 416.902, and 416.927(a);
- How we consider medical opinions, including that we may give controlling weight to certain medical opinions, as explained in current 20 CFR 404.1527(b)–(c) and 416.927(b)–(c);
- How we consider issues reserved to the Commissioner, as explained in current 20 CFR 404.1527(d) and 416.927(d);
- How we consider decisions by other governmental agencies and nongovernmental entities, as explained in current 20 CFR 404.1504 and 416.904; and
- Neither audiologists nor APRNs are AMSs, as explained in current 20 CFR 404.1502, 404.1513, 416.902, and 416.913.

We also propose to make a number of conforming changes to reflect this proposed implementation process.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Regulatory Flexibility Act

We certify that this NPRM would not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Carolyn W. Colvin,
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR parts 404 416 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.906, revise the fourth sentence of paragraph (b)(2) to read as follows:

§ 404.906 Testing modifications to the disability determination procedures.

* * * * *

(b) * * *

(2) * * * However, before an initial determination is made in any case where there is evidence which indicates the existence of a mental impairment, the decisionmaker will make every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment pursuant to our existing procedures (see § 404.1617). * * *

* * * * *

■ 3. In § 404.942, revise paragraph (f)(1) to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(f) * * *

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 404.1513a, 404.1520a, 404.1526, and 404.1546.

* * * * *

Subpart P—Determining Disability and Blindness

■ 4. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 5. Revise § 404.1502 to read as follows:

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[138] 61 FR 34466 (July 2, 1996).

§ 404.1502 Definitions for this subpart.

As used in the subpart—

(a) *Acceptable medical source* means a medical source who is a:

(1) Licensed physician (medical or osteopathic doctor);

(2) Licensed psychologist, which includes:

(i) A licensed or certified psychologist at the independent practice level, or

(ii) A licensed or certified school psychologist, or other licensed or certified individual with another title who performs the same function as a school psychologist in a school setting, for impairments of intellectual disability, learning disabilities, and borderline intellectual functioning only;

(3) Licensed optometrist for impairments of visual disorders only (except, in Puerto Rico, for the measurement of visual acuity and visual fields only);

(4) Licensed podiatrist for impairments of the foot, or foot and ankle only, depending on whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or the foot and ankle;

(5) Qualified speech-language pathologist for speech or language impairments only. For this source, *qualified* means that the speech-language pathologist must be licensed by the State professional licensing agency, or be fully certified by the State education agency in the State in which he or she practices, or hold a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech-Language-Hearing Association;

(6) Licensed audiologist for impairments of hearing loss and auditory processing disorders only (only with respect to claims filed (see § 404.614) on or after [EFFECTIVE DATE OF FINAL RULE]); or

(7) Licensed Advanced Practice Registered Nurse or other licensed advanced practice nurse with another title for impairments within his or her licensed scope of practice (only with respect to claims filed (see § 404.614) on or after [EFFECTIVE DATE OF FINAL RULE]).

(b) *Commissioner* means the Commissioner of Social Security or his or her authorized designee.

(c) *Laboratory findings* means anatomical, physiological, or psychological phenomena that can be shown by the use of medically acceptable laboratory diagnostic techniques. Diagnostic techniques include chemical tests (such as blood tests), electrophysiological studies (such as electrocardiograms and electroencephalograms), medical imaging (such as X-rays), and psychological tests.

(d) *Medical source* means an individual who is licensed as a healthcare worker by a State and working within the scope of practice permitted under State or Federal law, or an individual who is certified by a State as a speech-language pathologist or a school psychologist and acting within the scope of practice permitted under State or Federal law.

(e) *Nonmedical source* means a source of evidence who is not a medical source. This includes, but is not limited to,:

(1) You;

(2) Educational personnel (for example, school teachers, counselors, early intervention team members, developmental center workers, and daycare center workers);

(3) Public and private social welfare agency personnel; and

(4) Family members, caregivers, friends, neighbors, employers, and clergy.

(f) *Objective medical evidence* means signs, laboratory findings, or both.

(g) *Signs* means anatomical, physiological, or psychological abnormalities that can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, *e.g.*, abnormalities of behavior, mood, thought, memory, orientation, development, or perception and must also be shown by observable facts that can be medically described and evaluated.

(h) *State agency* means an agency of a State designated by that State to carry out the disability or blindness determination function.

(i) *Symptoms* means your own description of your physical or mental impairment.

(j) *We* or *us* means, as appropriate, either the Social Security Administration or the State agency making the disability or blindness determination.

(k) *You* or *your* means, as appropriate, the person who applies for benefits or for a period of disability, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

§ 404.1503 [Amended]

■ 6. In § 404.1503, remove paragraph (e).

■ 7. Revise § 404.1504 to read as follows:

§ 404.1504 Decisions by other governmental agencies and nongovernmental entities.

Other governmental agencies and nongovernmental entities—such as the Department of Veterans Affairs, the Department of Defense, the Department of Labor, the Office of Personnel Management, State agencies, and private insurers—make disability, blindness, employability, Medicaid, workers' compensation, and other benefits decisions for their own programs using their own rules. Because a decision by any other governmental agency or a nongovernmental entity about whether you are disabled, blind, employable, or entitled to any benefits is based on its rules, it is not binding on us and is not our decision about whether you are disabled or blind under our rules. Therefore, in claims filed (see § 404.614) on or after [EFFECTIVE DATE OF FINAL RULE], we will not provide any analysis in our determination or decision about a decision made by any other governmental agency or a nongovernmental entity about whether you are disabled, blind, employable, or entitled to any benefits. However, we will consider in our determination or decision relevant supporting evidence underlying the other governmental agency or nongovernmental entity's decision that we receive as evidence in your claim.

§ 404.1508 [Removed and Reserved]

■ 8. Remove and reserve § 404.1508:

■ 9. Revise § 404.1512 to read as follows:

§ 404.1512 Responsibility for evidence.

(a) *Your responsibility*—(1) *General.* In general, you have to prove to us that you are blind or disabled. You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled (*see* § 404.1513). This duty is ongoing and requires you to disclose any additional related evidence about which you become aware. This duty applies at each level of the administrative review process, including the Appeals Council level if the evidence relates to the period on or before the date of the administrative law judge hearing decision. We will consider only impairment(s) you say you have or about which we receive evidence. When you submit evidence received from another source, you must submit that evidence in its entirety, unless you previously submitted the same evidence to us or we instruct you otherwise. If we ask you, you must inform us about:

(i) Your medical source(s);

(ii) Your age;

(iii) Your education and training;

(iv) Your work experience;

(v) Your daily activities both before and after the date you say that you became disabled;

(vi) Your efforts to work; and

(vii) Any other factors showing how your impairment(s) affects your ability to work. In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.

(2) *Completeness.* The evidence in your case record must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind. It must allow us to determine—

(i) The nature and severity of your impairment(s) for any period in question;

(ii) Whether the duration requirement described in § 404.1509 is met; and

(iii) Your residual functional capacity to do work-related physical and mental activities, when the evaluation steps described in § 404.1520(e) or (f)(1) apply.

(b) *Our responsibility*—(1) *Development.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources and entities that maintain your medical sources' evidence when you give us permission to request the reports.

(i) *Every reasonable effort* means that we will make an initial request for evidence from your medical source or entity that maintains your medical source's evidence, and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, we will make one follow-up request to obtain the medical evidence necessary to make a determination. The medical source or entity that maintains your medical source's evidence will have a minimum of 10 calendar days from the date of our follow-up request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(ii) *Complete medical history* means the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe your disability began earlier. If applicable, we will develop your complete medical history for the 12-month period prior to:

(A) The month you were last insured for disability insurance benefits (see § 404.130);

(B) The month ending the 7-year period you may have to establish your disability and you are applying for widow's or widower's benefits based on disability (see § 404.335(c)(1)); or

(C) The month you attain age 22 and you are applying for child's benefits based on disability (see § 404.350(e)).

(2) *Obtaining a consultative examination.* We may ask you to attend one or more consultative examinations at our expense. See §§ 404.1517 through 404.1519t for the rules governing the consultative examination process. Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources. We may order a consultative examination while awaiting receipt of medical source evidence in some instances, such as when we know a source is not productive, is uncooperative, or is unable to provide certain tests or procedures. We will not evaluate this evidence until we have made every reasonable effort to obtain evidence from your medical sources.

(3) *Other work.* In order to determine under § 404.1520(g) that you are able to adjust to other work, we must provide evidence about the existence of work in the national economy that you can do (see §§ 404.1560 through 404.1569a), given your residual functional capacity (which we have already assessed, as described in § 404.1520(e)), age, education, and work experience.

■ 10. Revise § 404.1513 to read as follows:

§ 404.1513 Categories of evidence.

(a) *What we mean by evidence.* Subject to the provisions of paragraph (b), evidence is anything you or anyone else submits to us or that we obtain that relates to your claim. We consider evidence under §§ 404.1520b, 404.1520c (or under § 404.1527 for claims filed (see § 404.614) before [EFFECTIVE DATE OF FINAL RULE]). We evaluate evidence we receive according to the rules pertaining to the relevant category of evidence. The categories of evidence are:

(1) *Objective medical evidence.* Objective medical evidence is medical signs, laboratory findings, or both, as defined in § 404.1502(f).

(2) *Medical opinions.* A medical opinion is a statement from a medical source about what you can still do despite your impairment(s) and whether you have one or more impairment-related limitations or restrictions in the following abilities:

(i) Your ability to perform physical demands of work activities, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping, or crouching);

(ii) Your ability to perform mental demands of work activities, such as understanding; remembering; maintaining concentration, persistence, and pace; carrying out instructions; and responding appropriately to supervision, co-workers, and work pressures in a work setting;

(iii) Your ability to perform other demands of work, such as seeing, hearing, and using other senses; and

(iv) Your ability to adapt to environmental conditions, such as temperature extremes and fumes.

(For claims filed (see § 404.614) before [EFFECTIVE DATE OF FINAL RULE]), see § 404.1527(a) for the definition of medical opinion.)

(3) *Other medical evidence.* Other medical evidence is evidence from a medical source that is not objective medical evidence or a medical opinion, including judgments about the nature and severity of your impairments, your medical history, clinical findings, diagnosis, treatment prescribed with response, or prognosis. (For claims filed (see § 404.614) before [EFFECTIVE DATE OF FINAL RULE], *other medical evidence* does not include diagnosis, prognosis, and statements that reflect judgments about the nature and severity of your impairment(s)).

(4) *Statements from nonmedical sources.* A statement from a nonmedical source is a statement(s) made by nonmedical sources (including you) about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements the nonmedical source makes to medical sources during the course of your examination or treatment or that he or she makes to us during interviews, on applications, in reports or letters, and in testimony in our administrative proceedings.

(5) *Prior administrative medical findings.* A prior administrative medical finding is a finding, other than the ultimate determination about whether you are disabled, about a medical issue

made by our Federal and State agency medical and psychological consultants at a prior level of review (see § 404.900) based on their review of the evidence in your case record, such as:

(i) The existence and severity of your impairment(s);

(ii) The existence and severity of your symptoms;

(iii) Statements about whether your impairment(s) meets or medically equals any listing in the Listing of Impairments in Part 404, Subpart P, Appendix 1;

(iv) Your residual functional capacity;

(v) Whether your impairment(s) meets the duration requirement; and

(vi) How failure to follow prescribed treatment (see § 404.1530) and drug addiction and alcoholism (see § 404.1535) relate to your claim.

(b) *Exceptions for privileged communications.* (1) The privileged communications listed in paragraphs (b)(1)(i) and (ii) of this section are not evidence, and we will neither consider nor provide any analysis about them in your determination or decision. This exception for privileged communications applies equally whether your representative is an attorney or a non-attorney.

(i) Oral or written communications between you and your representative that are subject to the attorney-client privilege, unless you voluntarily disclose the communication to us; or

(ii) Your representative's analysis of your claim, unless he or she voluntarily discloses it to us. This analysis means information that is subject to the attorney work product doctrine, but it does not include medical evidence, medical source opinions, or any other factual matter that we may consider in determining whether or not you are entitled to benefits (see paragraph (b)(2) of this section).

(2) The attorney-client privilege generally protects confidential communications between an attorney and his or her client that are related to providing or obtaining legal advice. The attorney work product doctrine generally protects an attorney's analysis, theories, mental impressions, and notes. In the context of your disability claim, neither the attorney-client privilege nor the attorney work product doctrine allow you to withhold factual information, medical source opinions, or other medical evidence that we may consider in determining whether or not you are entitled to benefits. For example, if you tell your representative about the medical sources you have seen, your representative cannot refuse to disclose the identity of those medical sources to us based on the attorney-client privilege. As another example, if your representative asks a medical source to complete an opinion form related to your impairment(s), symptoms, or limitations, your representative cannot withhold the completed opinion form from us based on the attorney work product doctrine. The attorney work product doctrine would not protect the source's opinions on the completed form, regardless of whether or not your representative used the form in his or her analysis of your claim or made handwritten notes on the face of the report.

■ 11. Add § 404.1513a to read as follows:

§ 404.1513a Evidence from our Federal or State agency medical or psychological consultants.

The following rules apply to our Federal or State agency medical or psychological consultants that we consult in connection with administrative law judge hearings and Appeals Council reviews:

(a) In claims adjudicated by the State agency, a State agency medical or psychological consultant may make the determination of disability together with a State agency disability examiner or provide medical evidence to a State agency disability examiner when the disability examiner makes the initial or reconsideration determination alone (see § 404.1615(c) of this part). The following rules apply:

(1) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 404.1615(c)(1), he or she will consider the evidence in your case record and make administrative findings about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or medically equals the requirements for any impairment listed in appendix 1 to this subpart, and your residual functional capacity. These administrative medical findings are based on the evidence in your case but are not in themselves evidence at the level of the administrative review process at which they are made. See § 404.1513(a)(5).

(2) When a State agency disability examiner makes the initial determination alone as provided in § 404.1615(c)(3), he or she may obtain medical evidence from a State agency medical or psychological consultant about one or more of the medical issues listed in paragraph (a)(1) of this section. In these cases, the State agency disability examiner will consider the medical evidence of the State agency medical or psychological consultant under §§ 404.1520b and 404.1520c.

(3) When a State agency disability examiner makes a reconsideration determination alone as provided in § 404.1615(c)(3), he or she will consider prior administrative medical findings made by a State agency medical or psychological consultant at the initial level of the administrative review process, and any medical evidence provided by such consultants at the initial and reconsideration levels, about one or more of the medical issues listed in paragraph (a)(1)(i) of this section under §§ 404.1520b and 404.1520c.

(b) Administrative law judges are responsible for reviewing the evidence and making administrative findings of fact and conclusions of law. They will consider prior administrative medical findings and medical evidence from our Federal or State agency medical or psychological consultants as follows:

(1) Administrative law judges are not required to adopt any prior administrative medical findings, but they must consider this evidence according to §§ 404.1520b and 404.1520c because our Federal or State agency medical or psychological consultants are highly qualified experts in Social Security disability evaluation.

(2) Administrative law judges may also ask for medical evidence from expert medical sources. Administrative law judges will consider this evidence under §§ 404.1520b and 404.1520c, as appropriate.

(c) When the Appeals Council makes a decision, it will consider prior administrative medical findings according to the same rules for considering prior administrative medical findings as administrative law judges follow under paragraph (b) of this section.

■ 12. In § 404.1518, revise paragraph (c) to read as follows:

§ 404.1518 If you do not appear at a consultative examination.

* * * * *

(c) *Objections by your medical source(s).* If any of your medical sources tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your medical source(s) may agree to another type of examination for the same purpose.

■ 13. In § 404.1519g, revise paragraph (a) to read as follows:

§ 404.1519g Who we will select to perform a consultative examination.

(a) We will purchase a consultative examination only from a qualified medical source. The medical source may be your own medical source or another medical source. If you are a child, the medical source we choose may be a pediatrician.

* * * * *

■ 14. Revise § 404.1519h to read as follows:

§ 404.1519h Your medical source.

When, in our judgment, your medical source is qualified, equipped, and willing to perform the additional examination or test(s) for the fee schedule payment, and generally furnishes complete and timely reports, your medical source will be the preferred source for the purchased examination or test(s).

■ 15. Revise § 404.1519i to read as follows:

§ 404.1519i Other sources for consultative examinations.

We will use a different medical source than your medical source for a purchased examination or test in situations including, but not limited to, the following:

(a) Your medical source prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your medical source;

(c) You prefer a source other than your medical source and have a good reason for your preference;

(d) We know from prior experience that your medical source may not be a productive source, such as when he or she has consistently failed to provide complete or timely reports; or

(e) Your medical source is not a qualified medical source as defined in § 404.1519g.

■ 16. In § 404.1519n, revise paragraph (c)(6) to read as follows:

§ 404.1519n Informing the medical source of examination scheduling, report content, and signature requirements.

* * * * *

(c) * * *

(6) A medical opinion. Although we will ordinarily request a medical opinion as part of the consultative examination process, the absence of a medical opinion in a consultative examination report will not make the report incomplete. See § 404.1513(a)(3); and

* * * * *

■ 17. In § 404.1520a, revise the second sentence of paragraph (b)(1) to read as follows:

§ 404.1520a Evaluation of mental impairments.

* * * * *

(b) * * *

(1) * * * See § 404.1521 for more information about what is needed to show a medically determinable impairment. * * *

* * * * *

■ 18. Revise § 404.1520b to read as follows:

§ 404.1520b How we consider evidence.

After we review all of the evidence relevant to your claim, we make findings about what the evidence shows.

(a) *Complete and consistent evidence.* If all of the evidence we receive, including all medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make our determination or decision based on that evidence.

(b) *Incomplete or inconsistent evidence.* In some situations, we may not be able to make our determination or decision because the evidence in your case record is insufficient or inconsistent. We consider evidence to be insufficient when it does not contain all the information we need to make our determination or decision. We consider evidence to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in your case record is insufficient or inconsistent, we may need to take the additional actions in paragraphs (b)(1) through (4) of this section.

(1) If any of the evidence in your case record, including any medical opinion(s) and prior administrative medical findings, is inconsistent, we will consider the relevant evidence and see if we can determine whether you are disabled based on the evidence we have.

(2) If the evidence is consistent but we have insufficient evidence to determine whether you are disabled, or if after considering the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve the inconsistency or insufficiency. The action(s) we take will depend on the nature of the inconsistency or insufficiency. We will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs (b)(2)(i) through (iv) of this section. We might not take all of the actions listed paragraphs (b)(2)(i) through (iv) of this section. We will consider any additional evidence we receive together with the evidence we already have.

(i) We may recontact your medical source. We may choose not to seek additional evidence or clarification from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(ii) We may request additional existing evidence;

(iii) We may ask you to undergo a consultative examination at our expense (see §§ 404.1517 through 404.1519t); or

(iv) We may ask you or others for more information.

(3) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain additional evidence, the evidence is insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

(c) *Evidence that is neither valuable nor persuasive.* Paragraphs (c)(1) through (3) of this section apply in claims filed (see § 404.614) on or after [EFFECTIVE DATE OF FINAL RULE]. Because the evidence listed in paragraphs (c)(1) through (3) is inherently neither valuable nor persuasive to the issue of whether you are disabled or blind under the Act, we will not provide any analysis about how we considered such evidence in our determination or decision, even under § 404.1520c:

(1) *Decisions by other governmental agencies and nongovernmental entities.* See § 404.1504.

(2) *Disability examiner findings.* Findings made by a State agency disability examiner made at a previous level of adjudication about a medical issue, vocational issue, or the ultimate determination about whether you are disabled.

(3) *Statements on issues reserved to the Commissioner.* The statements listed in paragraphs (c)(3)(i) through (vii) of this section would direct our determination or decision that you are or are not disabled or blind within the meaning of the Act, but we are responsible for making the determination or decision about whether you are disabled or blind:

(i) Statements that you are or are not disabled, blind, able to work, or able to perform regular or continuing work;

(ii) Statements about whether or not your impairment(s) meets the duration requirement (see § 404.1509);

(iii) Statements about whether or not your impairment(s) meets or medically equals any listing in the Listing of Impairments in 20 CFR part 404, subpart P, Appendix 1;

(iv) Statements about what your residual functional capacity is using our programmatic terms about the functional exertional levels in Part 404, Subpart P, Appendix 2, Rule 200.00 instead of descriptions about your functional abilities and limitations (see § 404.1545);

(v) Statements about whether or not your residual functional capacity prevents you from doing past relevant work (see § 404.1560);

(vi) Statements that you do or do not meet the requirements of a medical-vocational rule in Part 404, Subpart P, Appendix 2; and

(vii) Statements about whether or not your disability continues or ends when we conduct a continuing disability review (see § 404.1594).

■ 19. Add § 404.1520c to read as follows:

§ 404.1520c How we consider and articulate medical opinions and prior administrative medical findings.

This section applies to claims filed (see § 404.614) on or after [EFFECTIVE DATE OF FINAL RULE]. For claims filed before [EFFECTIVE DATE OF FINAL RULE], the rules in § 404.1527 apply.

(a) *General.* As part of our consideration of all evidence in your claim under § 404.1520b, we consider and articulate how we consider medical opinions and prior administrative medical findings under this section. We will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s), including those from your medical sources. When a medical source provides one or more medical opinions or prior administrative medical findings, we will consider those medical opinions or prior administrative medical findings from that medical source together using the factors listed in paragraphs (c)(1) through (7) of this section, as appropriate. The most important factors we consider when we evaluate the evidentiary value of medical opinions and prior administrative medical findings are supportability (paragraph (c)(1) of this section) and consistency (paragraph (c)(2) of this section). We will articulate how we considered the medical opinions and prior administrative medical findings in your claim according to paragraph (b) of this section.

(b) *Articulation procedure.* We will articulate in our determination or decision how persuasive we find the medical opinions and prior administrative medical findings in your case record as follows:

(1) *Source-level articulation.* Because many claims have voluminous case records containing many types of evidence from different sources, it is not administratively feasible for us to articulate in each determination or decision how we considered all of the factors for all of the medical opinions and prior administrative medical findings in your case record. Instead, when a medical source provides one or more medical opinion(s) or prior administrative medical finding(s), we will consider the medical opinion(s) or prior administrative medical finding(s) from that medical source together using the factors listed in paragraphs (c)(1) through (7) of this section, as appropriate. We are not required to articulate separately how we considered multiple medical opinions or prior administrative medical findings from one medical source.

(2) *Most important factors.* For medical opinions and prior administrative medical findings in your case record made by acceptable medical sources, we will explain how we considered the factors of supportability (paragraph (c)(1) of this section) and consistency (paragraph (c)(2) of this section) in your determination or decision because those are the most important factors. We may, but are not required to, explain how we considered the factors in paragraphs (c)(3) through (7) of this section, as appropriate, when we articulate how we consider the medical opinions and prior administrative medical findings from acceptable medical sources in your case record.

(3) *Equally persuasive medical opinions or prior administrative medical findings about the same issue from acceptable medical sources.* When we find that two or more acceptable medical sources' medical opinions or prior administrative medical findings about the same issue are both equally well-supported (paragraph (c)(1) of this section) and consistent with the record (paragraph (c)(2) of this section) but are not exactly the same, we will articulate how we considered the other most persuasive factors in paragraphs (c)(3) through (7) of this section for those medical opinions or prior administrative medical findings in your determination or decision.

(4) *Medical opinions from medical sources who are not acceptable medical sources.* We will articulate in your determination or decision how we considered the medical opinion(s) from a medical source who is not an acceptable medical source only if we find it to be well-supported and consistent with the record, as well as more valuable and persuasive than the medical opinion(s) and prior administrative medical findings from all of the acceptable medical sources in your case record. When we do articulate how we considered the medical opinion(s) of a medical source who is not an acceptable medical source, we will articulate in your determination or decision how we considered the factors of supportability (paragraph (c)(1) of this section), consistency (paragraph (c)(2) of this section), and the other most persuasive factors in paragraphs (c)(3) through (7) of this section, as applicable.

(c) *Factors for consideration.* We will consider the following factors when we consider the medical opinion(s) and prior administrative medical finding(s) in your case:

(1) *Supportability.* The more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be.

(2) *Consistency.* The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s).

(3) *Relationship with the claimant*—(i) *Examining relationship.* A medical source may have a better understanding of your impairment(s) if he or she examines you than if the medical source only reviews evidence in your folder.

(ii) *Length of the treatment relationship.* The length of time of the treatment relationship may help demonstrate whether the medical source has a longitudinal understanding of your impairment(s).

(iii) *Frequency of examinations.* The frequency of your visits with the medical source may help demonstrate whether the medical source has a longitudinal understanding of your impairment(s).

(iv) *Purpose of treatment relationship.* The purpose for treatment you received from the medical source may help demonstrate the level of knowledge the medical source has of your impairment(s).

(v) *Extent of the treatment relationship.* The kinds and extent of examinations and testing the medical source has performed or ordered from specialists or independent laboratories may help demonstrate the level of knowledge the medical source has of your impairment(s).

(4) *Specialization.* The medical opinion or prior administrative medical finding of a medical source who has received advanced education and training to become a specialist may be more persuasive about medical issues related to his or her area of specialty than the medical opinion or prior administrative medical finding of a medical source who is not a specialist.

(5) *Familiarity with the entire record.* The medical opinion or prior administrative medical finding of a medical source may be more persuasive if the evidence demonstrates that the medical source is familiar with the other evidence in your case record than if the medical source is not familiar with the other evidence in your case record.

(6) *Understanding of our policy.* The medical opinion or prior administrative medical finding of a medical source may be more persuasive if the evidence demonstrates that the medical source understands our disability programs and evidentiary requirements.

(7) *Other factors.* We will also consider any factors that tend to support or contradict a medical opinion or prior administrative medical finding.

■ 20. Revise § 404.1521 to read as follows:

§ 404.1521 Establishing that you have a medically determinable impairment(s).

If you are not doing substantial gainful activity, we will then determine whether you have a medically determinable physical or mental impairment(s) (see § 404.1520(a)(4)(ii)). Your impairment(s) must result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. Therefore, a physical or mental impairment must be established by objective medical evidence from an acceptable medical source. We will not use your statement of symptoms, a diagnosis, or a medical opinion to establish the existence of an impairment(s). After we establish that you have a medically determinable impairment(s), then we determine whether your impairment(s) is severe.

■ 21. Revise § 404.1522 to read as follows:

§ 404.1522 What we mean by an impairment(s) that is not severe.

(a) *Non-severe impairment(s).* An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

■ 22. Revise § 404.1523 to read as follows:

§ 404.1523 Multiple impairments.

(a) *Unrelated severe impairments.* We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled, even though the two impairments in combination last for 12 months.

(b) *Concurrent impairments.* If you have two or more concurrent impairments that, when considered in combination, are severe, we must determine whether the combined effect of your impairments can be expected to continue to be severe for 12 months. If one or more of your impairments improves or is expected to improve within 12 months, so that the combined effect of your remaining impairments is no longer severe, we will find that you do not meet the 12-month duration test.

(c) *Combined effect.* In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, we will consider the combined impact of the impairments throughout the disability determination process. If we do not find that you have a medically severe combination of impairments, we will determine that you are not disabled (see § 404.1520).

■ 23. In § 404.1525, revise the last sentence in paragraph (c)(2) to read as follows:

§ 404.1525 Listing of Impairments in appendix 1.

* * * * *

(c) * * *

(2) * * * Even if we do not include specific criteria for establishing a diagnosis or confirming the existence of your impairment, you must still show that you have a severe medically determinable impairment(s), as defined in § 404.1521.

* * * * *

■ 24. In § 404.1526, revise paragraphs (d) and (e) to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(d) *Who is a designated medical or psychological consultant?* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. See § 404.1616 of this part for the necessary qualifications for medical consultants and psychological consultants and the limitations on what medical consultants who are not physicians can evaluate.

(e) *Who is responsible for determining medical equivalence?* (1) In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 404.1616 of this part) has the overall responsibility for determining medical equivalence.

(2) For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 404.918 of this part, with the Associate Commissioner for Disability Policy or his or her delegate.

(3) For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council.

■ 25. Revise § 404.1527 to read as follows:

§ 404.1527 Evaluating opinion evidence.

This section applies to claims filed (see § 404.614) before [EFFECTIVE DATE OF FINAL RULE]. For claims filed on or after [EFFECTIVE DATE OF FINAL RULE], the rules in § 404.1520c apply.

(a) *Definitions*—(1) *Medical opinions.* Medical opinions are statements from acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions.

(2) *Treating source.* Treating source means your own acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with an acceptable medical source when the medical evidence establishes that you see, or have seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for your medical condition(s). We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (*e.g.,* twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for your condition(s). We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the acceptable medical source to be a nontreating source.

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See § 404.1520b.

(c) *How we weigh medical opinions.* Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (c)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

(1) *Examining relationship.* Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

(2) *Treatment relationship.* Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. If we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight. When we do not give the treating source's opinion controlling weight, we apply the factors listed in paragraphs (c)(2)(i) and (ii) of this section, as well as the factors in paragraphs (c)(3) through (6) of this section in determining the weight to give the opinion. We will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion.

(i) *Length of the treatment relationship and the frequency of examination.* Generally, the longer a treating source has treated you and the more times you have been seen by a treating source, the more weight we will give to the source's medical opinion. When the treating source has seen you a number of times and long enough to have obtained a longitudinal picture of your impairment, we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(ii) *Nature and extent of the treatment relationship.* Generally, the more knowledge a treating source has about your impairment(s) the more weight we will give to the source's medical opinion. We will look at the treatment the source has provided and at the kinds and extent of examinations and testing the source has performed or ordered from specialists and independent laboratories. For example, if your ophthalmologist notices that you have complained of neck pain during your eye examinations, we will consider his or her opinion with respect to your neck pain, but we will give it less weight than that of another physician who has treated you for the neck pain. When the treating source has reasonable knowledge of your impairment(s), we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(3) *Supportability.* The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions. We will evaluate the degree to which these opinions consider all of the pertinent evidence in your claim, including opinions of treating and other examining sources.

(4) *Consistency.* Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

(5) *Specialization.* We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

(6) *Other factors.* When we consider how much weight to give to a medical opinion, we will also consider any factors you or others bring to our attention, or of which we are aware, which tend to support or contradict the opinion. For example, the amount of understanding of our disability programs and their evidentiary requirements that an acceptable medical source has, regardless of the source of that understanding, and the extent to which an acceptable medical source is familiar with the other information in your case record are relevant factors that we will consider in deciding the weight to give to a medical opinion.

(d) *Medical source opinions on issues reserved to the Commissioner.* Opinions on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; *i.e.,* that would direct the determination or decision of disability.

(1) *Opinions that you are disabled.* We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. A statement by a medical source that

you are "disabled" or "unable to work" does not mean that we will determine that you are disabled.

(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to this subpart, your residual functional capacity (see §§ 404.1545 and 404.1546), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (d)(1) and (d)(2) of this section.

(e) *Evidence from our Federal or State agency medical or psychological consultants.* The rules in § 404.1513a apply except that when an administrative law judge gives controlling weight to a treating source's medical opinion, the administrative law judge is not required to explain in the decision the weight he or she gave to the prior administrative medical findings in the claim.

§ 404.1528. [Removed and Reserved]

■ 26. Remove and reserve § 404.1528.

■ 27. In § 404.1529, revise paragraph (a), the second and third sentences of paragraph (c)(1), paragraph (c)(3) introductory text, and the third sentence of paragraph (c)(4) to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

(a) *General.* In determining whether you are disabled, we consider all your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. We will consider all of your statements about your symptoms, such as pain, and any description your medical sources or nonmedical sources may provide about how the symptoms affect your activities of daily living and your ability to work. However, statements about your pain or other symptoms will not alone establish that you are disabled. There must be objective medical evidence from an acceptable medical source that shows you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and that, when considered with all of the other evidence (including statements about the intensity and persistence of your pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that you are disabled. In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings, and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.

* * * * *

(c) * * *

(1) * * * In evaluating the intensity and persistence of your symptoms, we consider all of the available evidence from your medical sources and nonmedical sources about how your symptoms affect you. We also consider the medical opinions as explained in § 404.1520c. * * *

* * * * *

(3) *Consideration of other evidence.* Because symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. The information that your medical sources or nonmedical sources provide about your pain or other symptoms (*e.g.,* what may precipitate or aggravate your symptoms, what medications, treatments or other methods you use to alleviate them, and how the symptoms may affect your pattern of daily living) is also an important indicator of the intensity and persistence of your symptoms. Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions that your medical sources or nonmedical sources report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether you are disabled. We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your medical sources, and observations by our employees and other persons. Section 404.1520c explains in detail how we consider medical opinions and prior administrative medical findings about the nature and severity of your impairment(s) and any related symptoms, such as pain. Factors relevant to your symptoms, such as pain, which we will consider include:

* * * * *

(4) * * * We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your history, the signs and laboratory findings, and statements by your medical sources or other persons about how your symptoms affect you. * * *

* * * * *

■ 28. In § 404.1530, revise paragraph (a) to read as follows:

§ 404.1530 Need to follow prescribed treatment.

(a) *What treatment you must follow.* In order to get benefits, you must follow treatment prescribed by your medical source(s) if this treatment can restore your ability to work.

* * * * *

■ 29. In § 404.1579, revise the second sentence of paragraph (b)(1) introductory text and the second sentence of paragraph (b)(4) to read as follows:

§ 404.1579 How we will determine whether your disability continues or ends.

* * * * *

(b) * * *

(1) * * * A determination that there has been a decrease in medical severity must be based on improvement in the symptoms, signs, and/or laboratory findings associated with your impairment(s). * * *

* * * * *

(4) * * * We will consider all evidence you submit and that we obtain from your medical sources and nonmedical sources. * * *

* * * * *

■ 30. In § 404.1594, revise the second sentence of paragraph (b)(1) introductory text, the sixth sentence in Example 1 following paragraph (b)(1), the second sentence of paragraph (b)(6), and the fourth sentence of paragraph (c)(3)(v) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(b) * * *

(1) * * * A determination that there has been a decrease in medical severity must be based on improvement in the symptoms, signs, and/or laboratory

findings associated with your impairment(s).

Example 1: * * * When we reviewed your claim, your medical source, who has treated you, reported that he or she had seen you regularly every 2 to 3 months for the past 2 years. * * *

* * * * *

(6) * * * We will consider all evidence you submit and that we obtain from your medical sources and nonmedical sources. * * *

* * * * *

(c) * * *

(3) * * *

(v) * * * If you are able to engage in substantial gainful activity, we will determine whether an attempt should be made to reconstruct those portions of the missing file that were relevant to our most recent favorable medical decision (*e.g.,* work history, medical evidence, and the results of consultative examinations). * * *

* * * * *

■ 31. Amend appendix 1 to subpart P as follows:

■ a. In Part A:

■ i. Revise the second, third, and fourth sentences of 2.00.B.1.a;

■ ii. Revise 2.00.B.1.b;

■ iii. Revise the fourth sentence of 7.00H;

■ iv. Revise the second sentence of 8.00.C.3;

■ v. Revise the second sentence of 12.00.D.1.a;

■ vi. Revise the second sentence of 12.00.D.7; and

■ vii. Revise the fourth sentence of 14.00H.

■ b. In Part B:

■ i. Revise the second, third, and fourth sentences of 102.00.B.1.a;

■ ii. Revise 102.00.B.1.b;

■ iii. Revise the second sentence of 108.00.C.3.;

■ iv. Revise the first sentence 108.00.E.3.a; and

■ v. Revise the second sentence of 112.00.D.1.

The revisions read as follows:

Appendix 1 to Subpart P of Part 404—

* * * * *

2.00 * * *

B. * * *

1. * * *

a. * * * We generally require both an otologic examination and audiometric testing to establish that you have a medically determinable impairment that causes your hearing loss. You should have this audiometric testing within 2 months of the otologic examination. Once we have evidence that you have a medically determinable impairment, we can use the results of later audiometric testing to assess the severity of your hearing loss without another otologic examination. * * *

b. The otologic examination must be performed by a licensed physician (medical or osteopathic doctor) or audiologist. It must include your medical history, your description of how your hearing loss affects you, and the physician's or audiologist's description of the appearance of the external ears (pinnae and external ear canals), evaluation of the tympanic membranes, and assessment of any middle ear abnormalities.

* * * * *

7.00 * * *

H. * * * (See sections 404.1521, 404.1529, 416.921, and 416.929 of this chapter.) * * *

* * * * *

8.00 * * *

C. * * *

3. * * * We assess the impact of symptoms as explained in §§ 404.1521, 404.1529, 416.921, and 416.929 of this chapter. * * *

* * * * *

12.00 * * *

D. * * *

1. * * *

a. * * * See §§ 404.1521 and 416.921. * * *

* * * * *

7. * * * Such test results may be useful for disability evaluation when corroborated by other evidence from medical and nonmedical sources, including results from other psychological tests and information obtained in the course of the clinical evaluation. * * *

* * * * *

14.00 * * *

H. * * * See §§ 404.1521, 404.1529, 416.921, and 416.929. * * *

* * * * *

102.00 * * *

B. * * *

1. * * *

a. * * * We generally require both an otologic examination and audiometric testing to establish that you have a medically determinable impairment that causes your hearing loss. You should have this audiometric testing within 2 months of the otologic examination. Once we have evidence that you have a medically determinable impairment, we can use the results of later audiometric testing to assess the severity of your hearing loss without another otologic examination. * * *

b. The otologic examination must be performed by a licensed physician (medical or osteopathic doctor) or audiologist. It must include your medical history, your description of how your hearing loss affects you, and the physician's or audiologist's description of the appearance of the external ears (pinnae and external ear canals), evaluation of the tympanic membranes, and assessment of any middle ear abnormalities.

* * * * *

108.00. * * *

C. * * *

3. * * * We assess the impact of symptoms as explained in §§ 404.1521, 404.1529, 416.921, and 416.929 of this chapter.

* * * * *

E. * * *

3. * * *

a. *General.* We need documentation from an acceptable medical source to establish that you have a medically determinable impairment. * * *

* * * * *

112.00 * * *

D. * * *

1. * * * See §§ 404.1521 and 416.921. * * *

* * * * *

Subpart Q—Determinations of Disability

■ 32. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

§ 404.1615 [Amended]

■ 33. In § 404.1615, remove paragraph (d) and redesignate paragraphs (e) through (g) as paragraphs (d) through (f).

■ 34. Revise § 404.1616 to read as follows:

§ 404.1616 Medical consultants and psychological consultants.

(a) *What is a medical consultant?* A medical consultant is a licensed physician (see § 404.1502(a)(1)) who is a member of a team that makes disability determinations in a State agency (see § 404.1615), or who is a member of a team that makes disability determinations for us when we make disability determinations ourselves. The medical consultant completes the medical portion of the case review and any applicable residual functional capacity assessment about all physical impairment(s) in a claim.

(b) *What is a psychological consultant?* A psychological consultant is a licensed psychiatrist or psychologist (see § 404.1502(a)(2)) who is a member of a team that makes disability determinations in a State agency (see § 404.1615), or who is a member of a team that makes disability determinations for us when we make disability determinations ourselves. The psychological consultant completes the medical portion of the case review and any applicable residual functional capacity assessment about all mental impairment(s) in a claim. When we are unable to obtain the services of a qualified psychiatrist or psychologist despite making every reasonable effort in a claim involving a mental impairment(s), a medical consultant who is not a psychiatrist will evaluate the mental impairment(s).

(c) *Cases involving both physical and mental impairments.* In a case where there is evidence of both physical and mental impairments, the medical consultant will evaluate the physical impairments in accordance with paragraph (a) of this section, and the psychological consultant will evaluate the mental impairment(s) in accordance with paragraph (b) of this section.

■ 35. Revise § 404.1617 to read as follows:

§ 404.1617 Reasonable efforts to obtain review by a physician, psychiatrist, and psychologist.

When the evidence of record indicates the existence of a physical impairment, the State agency must make every reasonable effort to ensure that a medical consultant completes the medical portion of the case review and any applicable residual functional capacity assessment. When the evidence of record indicates the existence of a mental impairment, the State agency must make every reasonable effort to ensure that a psychological consultant completes the medical portion of the case review and any applicable residual functional capacity assessment. The State agency must determine if additional physicians, psychiatrists, and psychologists are needed to make the necessary reviews. When it does not have sufficient resources to make the necessary reviews, the State agency must attempt to obtain the resources needed. If the State agency is unable to obtain additional physicians, psychiatrists, and psychologists because of low salary rates or fee schedules, it should attempt to raise the State agency's levels of compensation to meet the prevailing rates for these services. If these efforts are unsuccessful, the State agency will seek assistance from us. We will assist the State agency as necessary. We will also monitor the State agency's efforts and where the State agency is unable to obtain the necessary services, we will make every reasonable effort to provide the services using Federal resources.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

■ 36. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 37. Revise § 416.902 to read as follows:

§ 416.902 Definitions for this subpart.

As used in the subpart—

(a) *Acceptable medical source* means a medical source who is a:

(1) Licensed physician (medical or osteopathic doctor);

(2) Licensed psychologist, which includes:

(i) A licensed or certified psychologist at the independent practice level; or

(ii) A licensed or certified school psychologist, or other licensed or certified individual with another title who performs the same function as a school psychologist in a school setting, for impairments of intellectual disability, learning disabilities, and borderline intellectual functioning only;

(3) Licensed optometrist for impairments of visual disorders only (except, in Puerto Rico, for the measurement of visual acuity and visual fields only);

(4) Licensed podiatrist for impairments of the foot, or foot and ankle only, depending on whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or the foot and ankle;

(5) Qualified speech-language pathologist for speech or language impairments only. For this source, *qualified* means that the speech-language pathologist must be licensed by the State professional licensing agency, or be fully certified by the State education agency in the State in which he or she practices, or hold a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech-Language-Hearing Association;

(6) Licensed audiologist for impairments of hearing loss and auditory processing disorders only (only in claims filed (see § 416.325) on or after [EFFECTIVE DATE OF FINAL RULE]); or

(7) Licensed Advanced Practice Registered Nurse or other licensed advanced practice nurse with another title for impairments within his or her licensed scope of practice (only in claims filed (see § 416.325) on or after [EFFECTIVE DATE OF FINAL RULE]).

(b) *Adult* means a person who is age 18 or older.

(c) *Child* means a person who has not attained age 18.

(d) *Commissioner* means the Commissioner of Social Security or his or her authorized designee.

(e) *Disability redetermination* means a redetermination of your eligibility based on disability using the rules for new applicants appropriate to your age, except the rules pertaining to performance of substantial gainful activity. For individuals who are working and for whom a disability redetermination is required, we will apply the rules in §§ 416.260–416.269. In conducting a disability redetermination, we will not use the rules for determining whether disability continues set forth in § 416.994 or § 416.994a. (See § 416.987.)

(f) *Impairment(s)* means a medically determinable physical or mental impairment or a combination of medically determinable physical or mental impairments.

(g) *Laboratory findings* means anatomical, physiological, or psychological phenomena that can be shown by the use of medically acceptable laboratory diagnostic techniques. Diagnostic techniques include chemical tests (such as blood tests), electrophysiological studies (such as electrocardiograms and electroencephalograms), medical imaging (such as X-rays), and psychological tests.

(h) *Marked and severe functional limitations,* when used as a phrase, means the standard of disability in the Social Security Act for children claiming SSI benefits based on disability. It is a level of severity that meets, medically equals, or functionally equals the listings. (See §§ 416.906, 416.924, and 416.926a.) The words "marked" and "severe" are also separate terms used throughout this subpart to describe measures of functional limitations; the term "marked" is also used in the listings. (See §§ 416.924 and 416.926a.) The meaning of the words "marked" and "severe" when used as part of the phrase marked and severe functional limitations is not the same as the meaning of the separate terms "marked" and "severe" used elsewhere in 20 CFR 404 and 416. (See §§ 416.924(c) and 416.926a(e).)

(i) *Medical source* means an individual who is licensed as a healthcare worker by a State and working within the scope of practice permitted under State or Federal law, or an individual who is certified by a State as a speech-language pathologist or a school psychologist and acting within the scope of practice permitted under State or Federal law.

(j) *Nonmedical source* means a source of evidence who is not a medical source. This includes, but is not limited to:

(1) You;

(2) Educational personnel (for example, school teachers, counselors, early intervention team members, developmental center workers, and daycare center workers);

(3) Public and private social welfare agency personnel; and

(4) Family members, caregivers, friends, neighbors, employers, and clergy.

(k) *Objective medical evidence* means signs, laboratory findings, or both.

(l) *Signs* means anatomical, physiological, or psychological abnormalities that can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, *e.g.,* abnormalities of behavior, mood, thought, memory, orientation, development, or perception and must also be shown by observable facts that can be medically described and evaluated.

(m) *State agency* means an agency of a State designated by that State to carry out the disability or blindness determination function.

(n) *Symptoms* means your own description of your physical or mental impairment.

(o) *The listings* means the Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter. When we refer to an impairment(s) that "meets, medically equals, or functionally equals the listings," we mean that the impairment(s) meets or medically equals the severity of any listing in appendix 1 of subpart P of part 404 of this chapter, as explained in §§ 416.925 and 416.926, or that it functionally equals the severity of the listings, as explained in § 416.926a.

(p) *We* or *us* means, as appropriate, either the Social Security Administration or the State agency making the disability or blindness determination.

(q) *You* or *your* means, as appropriate, the person who applies for benefits or for a period of disability, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

■ 38. In § 416.903, remove paragraph (e), redesignate paragraph (f) as paragraph (e), and revise newly redesignated paragraph (e) to read as follows:

§ 416.903 Who makes disability and blindness determinations.

* * * * *

(e) *Determinations for childhood impairments.* In making a determination under title XVI with respect to the disability of a child, we will make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the child's impairment(s) evaluates the case of the child.

■ 39. Revise § 416.904 to read as follows:

§ 416.904 Decisions by other governmental agencies and nongovernmental entities.

Other governmental agencies and nongovernmental entities—such as the Department of Veterans Affairs, the Department of Defense, the Department of Labor, the Office of Personnel Management, State agencies, and private insurers—make disability, blindness, employability, Medicaid, workers' compensation, and other benefits decisions for their own programs using their own rules. Because a decision by any other governmental agency or a nongovernmental entity about whether you are disabled, blind, employable, or entitled to any benefits is based on its rules, it is not binding on us and is not our decision about whether you are disabled or blind under our rules. Therefore, in claims filed (see § 416.325) on or after [EFFECTIVE DATE OF FINAL RULE] we will not provide any analysis in our determination or decision about a decision made by any other governmental agency or a nongovernmental entity about whether you are disabled, blind, employable, or entitled to any benefits. However, we will consider in our determination or decision relevant supporting evidence underlying the other governmental agency or nongovernmental entity's decision that we receive as evidence in your claim.

§ 416.908 [Removed and Reserved]

■ 40. Remove and reserve § 416.908:

■ 41. Revise § 416.912 to read as follows:

§ 416.912 Responsibility for evidence.

(a) *Your responsibility*—(1) *General.* In general, you have to prove to us that you are blind or disabled. You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled (*see* § 416.913). This duty is ongoing and requires you to disclose any additional related evidence about which you become aware. This duty applies at each level of the administrative review process, including the Appeals Council level if the evidence relates to the period on or before the date of the administrative law judge hearing decision. We will consider only impairment(s) you say you have or about which we receive evidence. When you submit evidence received from another source, you must submit that evidence in its entirety, unless you previously submitted the same evidence to us or we instruct you otherwise. If we ask you, you must inform us about:

(i) Your medical source(s);

(ii) Your age;

(iii) Your education and training;

(iv) Your work experience;

(v) Your daily activities both before and after the date you say that you became disabled;

(vi) Your efforts to work; and

(vii) Any other factors showing how your impairment(s) affects your ability to work, or, if you are a child, your functioning. In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.

(2) *Completeness.* The evidence in your case record must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind. It must allow us to determine—

(i) The nature and severity of your impairment(s) for any period in question;

(ii) Whether the duration requirement described in § 416.909 is met; and

(iii) Your residual functional capacity to do work-related physical and mental activities, when the evaluation steps described in § 416.920(e) or (f)(1) apply, or, if you are a child, how you typically function compared to children your age who do not have impairments.

(3) *Statutory blindness.* If you are applying for benefits on the basis of statutory blindness, we will require an examination by a physician skilled in diseases of the eye or by an optometrist, whichever you may select.

(b) *Our responsibility*—(1) *Development.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources and entities that maintain your medical sources' evidence when you give us permission to request the reports.

(i) *Every reasonable effort* means that we will make an initial request for evidence from your medical source or entity that maintains your medical source's evidence, and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, we will make one follow-up request to obtain the medical evidence necessary to make a determination. The medical source or entity that maintains your medical source's evidence will have a minimum of 10 calendar days from the date of our follow-up request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(ii) *Complete medical history* means the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe your disability began earlier.

(2) *Obtaining a consultative examination.* We may ask you to attend one or more consultative examinations at our expense. See §§ 416.917 through 416.919t for the rules governing the consultative examination process. Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources. We may order a consultative examination while awaiting receipt of medical source evidence in some instances, such as when we know a source is not productive, is uncooperative, or is unable to provide certain tests or procedures. We will not evaluate this evidence until we have made every reasonable effort to obtain evidence from your medical sources.

(3) *Other work.* In order to determine under § 416.920(g) that you are able to adjust to other work, we must provide evidence about the existence of work in the national economy that you can do (see §§ 416.960 through 416.969a), given your residual functional capacity (which we have already assessed, as described in § 416.920(e)), age, education, and work experience.

■ 42. Revise § 416.913 to read as follows:

§ 416.913 Categories of evidence.

(a) *What we mean by evidence.* Subject to the provisions of paragraph (b), evidence is anything you or anyone else submits to us or that we obtain that relates to your claim. We consider evidence under §§ 416.920b, 416.920c (or under § 416.927 for claims filed (see § 416.325) before [EFFECTIVE DATE OF FINAL RULE]). We evaluate evidence we receive according to the rules pertaining to the relevant category of evidence. The categories of evidence are:

(1) *Objective medical evidence.* Objective medical evidence is medical signs, laboratory findings, or both, as defined in § 416.902(k).

(2) *Medical opinions.* A medical opinion is a statement from a medical source about what you can still do despite your impairment(s) and whether you have one or more impairment-related limitations or restrictions in the abilities listed in paragraphs (a)(2)(i)(A)–(D) and (a)(2)(ii)(A)–(F) of this section. (For claims filed (see § 416.325) before [EFFECTIVE DATE OF FINAL RULE]), see § 416.927(a) for the definition of medical opinion.)

(i) Medical opinions in adult claims are about impairment-related limitations and restrictions in:

(A) Your ability to perform physical demands of work activities, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping, or crouching);

(B) Your ability to perform mental demands of work activities, such as understanding; remembering; maintaining concentration, persistence, and pace; carrying out instructions; and responding appropriately to supervision, co-workers, and work pressures in a work setting;

(C) Your ability to perform other demands of work, such as seeing, hearing, and using other senses; and

(D) Your ability to adapt to environmental conditions, such as temperature extremes and fumes.

(ii) Medical opinions in child claims are about impairment-related limitations and restrictions in your abilities in the six domains of functioning:

(A) Acquiring and using information (see § 416.926a(g));

(B) Attending and completing tasks (see § 416.926a(h));

(C) Interacting and relating with others (see § 416.926a(i));

(D) Moving about and manipulating objects (see § 416.926a(j));

(E) Caring for yourself (see § 416.926a(k)); and

(F) Health and physical well-being (see § 416.926a(l)).

(3) *Other medical evidence.* Other medical evidence is evidence from a medical source that is not objective medical evidence or a medical opinion, including judgments about the nature and severity of your impairments, your medical history, clinical findings, diagnosis, treatment prescribed with response, or prognosis. (For claims filed (see § 416.325) before [EFFECTIVE DATE OF FINAL RULE]), other medical evidence does not include diagnosis, prognosis, and statements that reflect judgments about the nature and severity of your impairment(s)).

(4) *Statements from nonmedical sources.* A statement from a nonmedical source is a statement(s) made by nonmedical sources (including you) about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements the nonmedical source makes to medical sources during the course of your examination or treatment or that he or she makes to us during interviews, on applications, in reports or letters, and in testimony in our administrative proceedings.

(5) *Prior administrative medical findings.* A prior administrative medical finding is a finding, other than the ultimate determination about whether you are disabled, about a medical issue made by our Federal and State agency medical and psychological consultants at a prior level of review (see § 416.1400) based on their review of the evidence in your case record, such as:

(i) The existence and severity of your impairment(s);

(ii) The existence and severity of your symptoms;

(iii) Statements about whether your impairment(s) meets or medically equals any listing in the Listing of Impairments in Part 404, Subpart P, Appendix 1;

(iv) If you are a child, statements about whether your impairment(s) functionally equals the listings in Part 404, Subpart P, Appendix 1;

(v) If you are an adult, your residual functional capacity;

(vi) Whether your impairment(s) meets the duration requirement; and

(vii) How failure to follow prescribed treatment (see § 404.1530) and drug addiction and alcoholism (see § 404.1535) relate to your claim.

(b) *Exceptions for privileged communications.* (1) The privileged communications listed in paragraphs (b)(1)(i) and (ii) of this section are not evidence, and we will neither consider nor provide any analysis about them in your determination or decision. This exception for privileged communications applies equally whether your representative is an attorney or non-attorney.

(i) Oral or written communications between you and your representative that are subject to the attorney-client privilege, unless you voluntarily disclose the communication to us.

(ii) Your representative's analysis of your claim, unless he or she voluntarily discloses it to us. This analysis means information that is subject to the attorney work product doctrine, but it does not include medical evidence, medical source opinions, or any other factual matter that we may consider in determining whether or not you are entitled to benefits (see paragraph (b)(2) of this section).

(2) The attorney-client privilege generally protects confidential communications between an attorney and his or her client that are related to providing or obtaining legal advice. The attorney work product doctrine generally protects an attorney's analysis, theories, mental impressions, and notes. In the context of your disability claim, neither the attorney-client privilege nor the attorney work product doctrine allow you to withhold factual information, medical source opinions, or other medical evidence that we may consider in determining whether or not you are entitled to benefits. For example, if you tell your representative about the medical sources you have seen, your representative cannot refuse to disclose the identity of those medical sources to us based on the attorney-client privilege. As another example, if your representative asks a medical source to complete an opinion form related to your impairment(s), symptoms, or limitations, your representative cannot withhold the completed opinion form from us based on the attorney work product doctrine. The attorney work product doctrine would not protect the source's opinions on the completed form, regardless of whether or not your representative used the form in his or her analysis of your claim or made handwritten notes on the face of the report.

■ 43. Add § 416.913a to read as follows:

§ 416.913a Evidence from our Federal or State agency medical or psychological consultants.

The following paragraphs (a) through (c) apply to our Federal or State agency medical or psychological consultants that we consult in connection with administrative law judge hearings and Appeals Council reviews:

(a) In claims adjudicated by the State agency, a State agency medical or psychological consultant may make the determination of disability together with a State agency disability examiner or provide medical evidence to a State agency disability examiner when the disability examiner makes the initial or reconsideration determination alone (see § 416.1015(c) of this part). The following rules apply:

(1) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 416.1015(c)(1), he or she will consider the evidence in your case record and make administrative findings about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or medically equals the requirements for any impairment listed in appendix 1 to this subpart, and your residual functional capacity. These administrative medical findings are based on the evidence in your case but are not in themselves evidence at the level of the administrative review process at which they are made. See § 416.913(a)(5).

(2) When a State agency disability examiner makes the initial determination alone as provided in § 416.1015(c)(3), he or she may obtain medical evidence from a State agency medical or psychological consultant about one or more of the medical issues listed in paragraph (a)(1) of this section. In these cases, the State agency disability examiner will consider the medical evidence of the State agency medical or psychological consultant under §§ 416.920b and 416.920c.

(3) When a State agency disability examiner makes a reconsideration determination alone as provided in § 416.1015(c)(3), he or she will consider prior administrative medical findings made by a State agency medical or psychological consultant at the initial level of the administrative review process, and any medical evidence provided by such consultants at the initial and reconsideration levels, about one or more of the medical issues listed in paragraph (a)(1)(i) of this section under §§ 416.920b and 416.920c.

(b) Administrative law judges are responsible for reviewing the evidence and making administrative findings of fact and conclusions of law. They will consider prior administrative medical findings and medical evidence from our Federal or State agency medical or psychological consultants as follows:

(1) Administrative law judges are not required to adopt any prior administrative medical findings, but they must consider this evidence according to §§ 416.920b and 416.920c because our Federal or State agency medical or psychological consultants are highly qualified experts in Social Security disability evaluation.

(2) Administrative law judges may also ask for medical evidence from expert medical sources. Administrative law judges will consider this evidence under §§ 416.920b and 416.920c, as appropriate.

(c) When the Appeals Council makes a decision, it will consider prior administrative medical findings according to the same rules for considering prior administrative medical findings as administrative law judges follow under paragraph (b) of this section.

■ 44. In § 416.918, revise paragraph (c) to read as follows:

§ 416.918 If you do not appear at a consultative examination.

* * * * *

(c) *Objections by your medical source(s).* If any of your medical sources tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your medical source(s) may agree to another type of examination for the same purpose.

■ 45. In § 416.919g, revise paragraph (a) to read as follows:

§ 416.919g Who we will select to perform a consultative examination.

(a) We will purchase a consultative examination only from a qualified medical source. The medical source may be your own medical source or another medical source. If you are a child, the medical source we choose may be a pediatrician.

* * * * *

■ 46. Revise § 416.919h to read as follows:

§ 416.919h Your medical source.

When, in our judgment, your medical source is qualified, equipped, and willing to perform the additional examination or test(s) for the fee schedule payment, and generally furnishes complete and timely reports, your medical source will be the preferred source for the purchased examination or test(s).

■ 47. Revise § 416.919i to read as follows:

§ 416.919i Other sources for consultative examinations.

We will use a different medical source than your medical source for a purchased examination or test in situations including, but not limited to, the following:

(a) Your medical source prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your medical source;

(c) You prefer a source other than your medical source and have a good reason for your preference;

(d) We know from prior experience that your medical source may not be a productive source, such as when he or she has consistently failed to provide complete or timely reports; or

(e) Your medical source is not a qualified medical source as defined in § 416.919g.

■ 48. In § 416.919n, revise paragraph (c)(6) to read as follows:

§ 416.919n Informing the medical source of examination scheduling, report content, and signature requirements.

* * * * *

(c) * * *

(6) A medical opinion. Although we will ordinarily request a medical opinion as part of the consultative examination process, the absence of a medical opinion in a consultative examination report will not make the report incomplete. See § 416.913(a)(3); and

* * * * *

■ 49. In § 416.920a, revise the second sentence of paragraph (b)(1) to read as follows:

§ 416.920a Evaluation of mental impairments.

* * * * *

(b) * * *

(1) * * * See § 416.921 for more information about what is needed to show a medically determinable impairment. * * *

* * * * *

■ 50. Revise § 416.920b to read as follows:

§ 416.920b How we consider evidence.

After we review all of the evidence relevant to your claim, we make findings about what the evidence shows.

(a) *Complete and consistent evidence.* If all of the evidence we receive, including all medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make our determination or decision based on that evidence.

(b) *Incomplete or inconsistent evidence.* In some situations, we may not be able to make our determination or decision because the evidence in your case record is insufficient or inconsistent. We consider evidence to be insufficient when it does not contain all the information we need to make our determination or decision. We consider evidence to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in your case record is insufficient or inconsistent, we may need to take the additional actions in paragraphs (b)(1) through (4) of this section.

(1) If any of the evidence in your case record, including any medical opinion(s) and prior administrative medical findings, is inconsistent, we will consider the relevant evidence and see if we can determine whether you are disabled based on the evidence we have.

(2) If the evidence is consistent but we have insufficient evidence to determine whether you are disabled, or if after considering the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve the inconsistency or insufficiency. The action(s) we take will depend on the nature of the inconsistency or insufficiency. We will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs (b)(2)(i) through (iv) of this section. We might not take all of the actions listed below. We will consider any additional evidence we receive together with the evidence we already have.

(i) We may recontact your medical source. We may choose not to seek additional evidence or clarification from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(ii) We may request additional existing evidence;

(iii) We may ask you to undergo a consultative examination at our expense (see §§ 416.917 through 416.919t); or

(iv) We may ask you or others for more information.

(3) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain additional evidence, the evidence is insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

(c) *Evidence that is neither valuable nor persuasive.* Paragraphs (c)(1) through (3) apply in claims filed (see § 416.325) on or after [EFFECTIVE DATE OF FINAL RULE]. Because the evidence listed in paragraphs (c)(1) through (3) of this section is inherently neither valuable nor persuasive to the issue of whether you are disabled or blind under the Act, we will not provide any analysis about how we considered such evidence in our determination or decision, even under § 416.920c:

(1) *Decisions by other governmental agencies and nongovernmental entities.* See § 416.904.

(2) *Disability examiner findings.* Findings made by a State agency disability examiner made at a previous level of adjudication about a medical issue, vocational issue, or the ultimate determination about whether you are disabled.

(3) *Statements on issues reserved to the Commissioner.* The statements listed in paragraphs (c)(3)(i) through (viii) of this section would direct our determination or decision that you are or are not disabled or blind within the meaning of the Act, but we are responsible for making the determination or decision about whether you are disabled or blind:

(i) Statements that you are or are not disabled, blind, able to work, or able to perform regular or continuing work;

(ii) Statements about whether or not your impairment(s) meets the duration requirement (see § 416.909);

(iii) Statements about whether or not your impairment(s) meets or medically equals any listing in the Listing of Impairments in 20 CFR part 404, subpart P, Appendix 1;

(iv) If you are a child, statements about whether or not your impairment(s) functionally equals the listings in appendix 1 to subpart P of part 404 (see § 416.926a);

(v) If you are an adult, statements about what your residual functional capacity is using our programmatic terms about the functional exertional levels in appendix 2 to subpart P of part 404, Rule 200.00 instead of descriptions about your functional abilities and limitations (see § 416.945);

(vi) If you are an adult, statements about whether or not your residual functional capacity prevents you from doing past relevant work (see § 416.960);

(vii) If you are an adult, statements that you do or do not meet the requirements of a medical-vocational rule in appendix 2 to subpart P of part 404; and

(viii) Statements about whether or not your disability continues or ends when we conduct a continuing disability review (see § 416.994).

■ 51. Add § 416.920c to read as follows:

§ 416.920c How we consider and articulate medical opinions and prior administrative medical findings.

This section applies to claims filed (see § 416.325) on or after [EFFECTIVE DATE OF FINAL RULE]. For claims filed before [EFFECTIVE DATE OF FINAL RULE], the rules in § 416.927 apply.

(a) *General.* As part of our consideration of all evidence in your claim under § 416.920b, we consider and articulate how we consider medical opinions and prior administrative medical findings under this section. We will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s), including those from your medical sources. When a medical source provides one or more medical opinions or prior administrative medical findings, we will consider those medical opinions or prior administrative medical findings from that medical source together using the factors listed in paragraphs (c)(1) through (7) of this section, as appropriate. The most important factors we consider when we evaluate the evidentiary value of medical opinions and prior administrative medical findings are supportability (paragraph (c)(1) of this section) and consistency (paragraph (c)(2) of this section). We will articulate how we considered the medical opinions and prior administrative medical findings in your claim according to paragraph (b) of this section.

(b) *Articulation procedure.* We will articulate in our determination or decision how persuasive we find the medical opinions and prior administrative medical findings in your case record as follows:

(1) *Source-level articulation.* Because many claims have voluminous case records containing many types of evidence from different sources, it is not administratively feasible for us to articulate in each determination or decision how we considered all of the factors for all of the medical opinions and prior administrative medical findings in your case record. Instead, when a medical source provides one or more medical opinion(s) or prior administrative medical finding(s), we will consider the medical opinion(s) or prior administrative medical finding(s) from that medical source together using the factors listed in paragraphs (c)(1) through (7) of this section, as appropriate. We are not required to articulate separately how we considered multiple medical opinions or prior administrative medical findings from one medical source.

(2) *Most important factors.* For medical opinions and prior administrative medical findings in your case record made by acceptable medical sources, we will explain how we considered the factors of supportability (paragraph (c)(1) of this section) and consistency (paragraph (c)(2) of this section) in your determination or decision because those are the most important factors. We may, but are not required to, explain how we considered the factors in paragraphs (c)(3) through (7) of this section, as appropriate, when we articulate how we consider the medical opinions and prior administrative medical findings from acceptable medical sources in your case record.

(3) *Equally persuasive medical opinions or prior administrative medical findings about the same issue from acceptable medical sources.* When we find that two or more acceptable medical sources' medical opinions or prior administrative medical findings about the same issue are both equally well-supported (paragraph (c)(1) of this section) and consistent with the record (paragraph (c)(2) of this section) but are not exactly the same, we will articulate how we considered the other most persuasive factors in paragraphs (c)(3) through (7) of this section for those medical opinions or prior administrative medical findings in your determination or decision.

(4) *Medical opinions from medical sources who are not acceptable medical sources.* We will articulate in your determination or decision how we considered the medical opinion(s) from a medical source who is not an acceptable medical source only if we find it to be well-supported and consistent with the record, as well as more valuable and persuasive than the medical opinion(s) and prior administrative medical findings from all of the acceptable medical sources in your case record. When we do articulate how we considered the medical opinion(s) of a medical source who is not an acceptable medical source, we will articulate in your determination or decision how we considered the factors of supportability (paragraph (c)(1) of this section), consistency (paragraph (c)(2) of this section), and the other most persuasive factors in paragraphs (c)(3) through (7) of this section, as applicable.

(c) *Factors for consideration.* We will consider the following factors when we consider the medical opinion(s) and prior administrative medical finding(s) in your case:

(1) *Supportability.* The more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be.

(2) *Consistency.* The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s).

(3) *Relationship with the claimant*—(i) *Examining relationship.* A medical source may have a better understanding of your impairment(s) if he or she examines you than if the medical source only reviews evidence in your folder.

(ii) *Length of the treatment relationship.* The length of time of the treatment relationship may help demonstrate whether the medical source has a longitudinal understanding of your impairment(s).

(iii) *Frequency of examinations.* The frequency of your visits with the medical source may help demonstrate whether the medical source has a longitudinal understanding of your impairment(s).

(iv) *Purpose of treatment relationship.* The purpose for treatment you received from the medical source may help demonstrate the level of knowledge the medical source has of your impairment(s).

(v) *Extent of the treatment relationship.* The kinds and extent of examinations and testing the medical source has performed or ordered from specialists or independent laboratories may help demonstrate the level of knowledge the medical source has of your impairment(s).

(4) *Specialization.* The medical opinion or prior administrative medical finding of a medical source who has received advanced education and training to become a specialist may be more persuasive about medical issues related to his or her area of specialty than the medical opinion or prior administrative medical finding of a medical source who is not a specialist.

(5) *Familiarity with the entire record.* The medical opinion or prior administrative medical finding of a medical source may be more persuasive if the evidence demonstrates that the medical source is familiar with the other evidence in your case record than if the medical source is not familiar with the other evidence in your case record.

(6) *Understanding of our policy.* The medical opinion or prior administrative medical finding of a medical source may be more persuasive if the evidence demonstrates that the medical source understands our disability programs and evidentiary requirements.

(7) *Other factors.* We will also consider any factors that tend to support or contradict a medical opinion or prior administrative medical finding.

■ 52. Revise § 416.921 to read as follows:

§ 416.921 Establishing that you have a medically determinable impairment(s).

If you are not doing substantial gainful activity, we will then determine whether you have a medically determinable physical or mental impairment(s) (see § 416.920(a)(4)(ii)). Your impairment(s) must result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. Therefore, a physical or mental impairment must be established by objective medical evidence from an acceptable medical source. We will not use your statement of symptoms, a diagnosis, or a medical opinion to establish the existence of an impairment(s). After we establish that you have a medically determinable impairment(s), then we determine whether your impairment(s) is severe.

■ 53. Revise § 416.922 to read as follows:

§ 416.922 What we mean by an impairment(s) that is not severe in an adult.

(a) *Non-severe impairment(s).* An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

■ 54. Revise § 416.923 to read as follows:

§ 416.923 Multiple impairments.

(a) *Unrelated severe impairments.* We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled, even though the two impairments in combination last for 12 months.

(b) *Concurrent impairments.* If you have two or more concurrent impairments that, when considered in combination, are severe, we must determine whether the combined effect of your impairments can be expected to continue to be severe for 12 months. If one or more of your impairments improves or is expected to improve within 12 months, so that the combined effect of your remaining impairments is no longer severe, we will find that you do not meet the 12-month duration test.

(c) *Combined effect.* In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, we will consider the combined impact of the impairments throughout the disability determination process. If we do not find that you have a medically severe combination of impairments, we will determine that you are not disabled (see §§ 416.920 and 416.924).

■ 55. In § 416.924a, revise paragraph (a) introductory text, the last sentence of paragraph (a)(1)(i), the last sentence in paragraph (a)(1)(iii), and the paragraph (a)(2) heading to read as follows:

§ 416.924a Considerations in determining disability for children.

(a) *Basic considerations.* We consider all evidence in your case record (see § 416.913). The evidence in your case record may include information from medical sources (such as your pediatrician or other physician; psychologist; qualified speech-language pathologist; and physical, occupational, and rehabilitation therapists) and nonmedical sources (such as your parents, teachers, and other people who know you).

(1) * * *

(i) * * * (*See* § 416.920c.)

* * * * *

(iii) * * * When a medical source has accepted and relied on such information to reach a diagnosis, we may consider this information to be a sign, as defined in § 416.902(l).

(2) *Statements from nonmedical sources.* * * *

* * * * *

■ 56. In § 416.924b, revise the first sentence of paragraph (b)(3) to read as follows:

§ 416.924b Age as a factor of evaluation in the sequential evaluation process for children.

* * * * *

(b) * * *

(3) Notwithstanding the provisions in paragraph (b)(1) of this section, we will not compute a corrected chronological age if the medical evidence shows that your medical source has already considered your prematurity in his or her assessment of your development. * * *

■ 57. In § 416.925, revise the last sentence in paragraph (c)(2) to read as follows:

§ 416.925 Listing of Impairments in appendix 1.

* * * * *

(c) * * *

(2) * * * Even if we do not include specific criteria for establishing a diagnosis or confirming the existence of your impairment, you must still show that you have a severe medically determinable impairment(s), as defined in §§ 416.921 and 416.924(c).

* * * * *

■ 58. In § 416.926, revise paragraphs (d) and (e) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(d) *Who is a designated medical or psychological consultant?* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. See § 416.1016 of this part for the necessary qualifications for medical consultants and psychological consultants and the limitations on what medical consultants who are not physicians can evaluate.

(e) *Who is responsible for determining medical equivalence?* (1) In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016 of this part) has the overall responsibility for determining medical equivalence.

(2) For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is

changed under § 416.1418 of this part, with the Associate Commissioner for Disability Policy or his or her delegate.

(3) For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council.

■ 59. In § 416.926a, revise the second sentence of paragraph (b)(3) to read as follows:

§ 416.926a Functional equivalence for children.

* * * * *

(b) * * *

(3) * * * We will ask for information from your medical sources who can give us medical evidence, including medical opinions, about your limitations and restrictions. * * *

* * * * *

■ 60. Revise § 416.927 to read as follows:

§ 416.927 Evaluating opinion evidence.

This section applies to claims filed (see § 416.325) before [EFFECTIVE DATE OF FINAL RULE]. For claims filed on or after [EFFECTIVE DATE OF FINAL RULE], the rules in § 416.920c apply.

(a) *Definitions*—(1) *Medical opinions.* Medical opinions are statements from acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions.

(2) *Treating source.* Treating source means your own acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with an acceptable medical source when the medical evidence establishes that you see, or have seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for your medical condition(s). We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (*e.g.,* twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for your condition(s). We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the acceptable medical source to be a nontreating source.

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See § 416.920b.

(c) *How we weigh medical opinions.* Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (c)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

(1) *Examining relationship.* Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

(2) *Treatment relationship.* Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. If we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight. When we do not give the treating source's opinion controlling weight, we apply the factors listed in paragraphs (c)(2)(i) and (ii) of this section, as well as the factors in paragraphs (c)(3) through (6) of this section in determining the weight to give the opinion. We will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion.

(i) *Length of the treatment relationship and the frequency of examination.* Generally, the longer a treating source has treated you and the more times you have been seen by a treating source, the more weight we will give to the source's medical opinion. When the treating source has seen you a number of times and long enough to have obtained a longitudinal picture of your impairment, we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(ii) *Nature and extent of the treatment relationship.* Generally, the more knowledge a treating source has about your impairment(s) the more weight we will give to the source's medical opinion. We will look at the treatment the source has provided and at the kinds and extent of examinations and testing the source has performed or ordered from specialists and independent laboratories. For example, if your ophthalmologist notices that you have complained of neck pain during your eye examinations, we will consider his or her opinion with respect to your neck pain, but we will give it less weight than that of another physician who has treated you for the neck pain. When the treating source has reasonable knowledge of your impairment(s), we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(3) *Supportability.* The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions. We will evaluate the degree to which these opinions consider all of the pertinent evidence in your claim, including opinions of treating and other examining sources.

(4) *Consistency.* Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

(5) *Specialization.* We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

(6) *Other factors.* When we consider how much weight to give to a medical opinion, we will also consider any factors you or others bring to our attention, or of which we are aware, which tend to support or contradict the opinion. For example, the amount of understanding of our disability programs and their evidentiary requirements that an acceptable medical source has, regardless of the source of that understanding, and the extent to which an acceptable medical source is familiar with the other information in

your case record are relevant factors that we will consider in deciding the weight to give to a medical opinion.

(d) *Medical source opinions on issues reserved to the Commissioner.* Opinions on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; *i.e.,* that would direct the determination or decision of disability.

(1) *Opinions that you are disabled.* We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled.

(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to this subpart, your residual functional capacity (see §§ 416.945 and 416.946), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (d)(1) and (2) of this section.

(e) *Evidence from our Federal or State agency medical or psychological consultants.* The rules in § 416.913a apply except that when an administrative law judge gives controlling weight to a treating source's medical opinion, the administrative law judge is not required to explain in the decision the weight he or she gave to the prior administrative medical findings in the claim.

§ 416.928. [Removed and Reserved]

■ 61. Remove and reserve § 416.928.

■ 62. In § 416.929, revise paragraph (a), the second and third sentences of paragraph (c)(1), paragraph (c)(3) introductory text, and the third sentence of paragraph (c)(4) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

(a) *General.* In determining whether you are disabled, we consider all your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. We will consider all of your statements about your symptoms, such as pain, and any description your medical sources or nonmedical sources may provide about how the symptoms affect your activities of daily living and your ability to work (or, if you are a child, your functioning). However, statements about your pain or other symptoms will not alone establish that you are disabled. There must be objective medical evidence from an acceptable medical source that shows you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and that, when considered with all of the other evidence (including statements about the intensity and persistence of your pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that you are disabled. In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings, and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work (or if you are a child, your functioning).

* * * * *

(c) * * *

(1) * * * In evaluating the intensity and persistence of your symptoms, we consider all of the available evidence from your medical sources and nonmedical sources about how your symptoms affect you. We also consider the medical opinions as explained in § 416.920c. * * *

* * * * *

(3) *Consideration of other evidence.* Because symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. The information that your medical sources or nonmedical sources provide about your pain or other symptoms (*e.g.,* what may precipitate or aggravate your symptoms, what medications, treatments or other methods you use to alleviate them, and how the symptoms may affect your pattern of daily living) is also an important indicator of the intensity and persistence of your symptoms. Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions that your medical sources or nonmedical sources report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether you are disabled. We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your medical sources, and observations by our employees and other persons. If you are a child, we will also consider all of the evidence presented, including evidence submitted by your medical sources (such as physicians, psychologists, and therapists) and nonmedical sources (such as educational agencies and personnel, parents and other relatives, and social welfare agencies). Section 416.920c explains in detail how we consider medical opinions and prior administrative medical findings about the nature and severity of your impairment(s) and any related symptoms, such as pain. Factors relevant to your symptoms, such as pain, which we will consider include:

* * * * *

(4) * * * We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your history, the signs and laboratory findings, and statements by your medical sources or other persons about how your symptoms affect you. * * *

* * * * *

■ 63. In § 416.930, revise paragraph (a) to read as follows:

§ 416.930 Need to follow prescribed treatment.

(a) *What treatment you must follow.* In order to get benefits, you must follow treatment prescribed by your medical source(s) if this treatment can restore your ability to work.

* * * * *

■ 64. In § 416.993, revise the seventh and ninth sentences of paragraph (b) to read as follows:

§ 416.993 Medical evidence in continuing disability review cases.

* * * * *

(b) * * * See § 416.912(b)(1)(i) concerning what we mean by every reasonable effort. * * * See § 416.912(b)(1)(ii).

* * * * *

■ 65. In § 416.994, revise the sixth sentence in Example 1 following paragraph (b)(1)(i), the second sentence of paragraph (b)(1)(vi), and the fourth sentence of (b)(2)(iv)(E) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends.

* * * * *

(b) * * *

(1) * * *

(i) * * *

Example 1: * * * When we reviewed your claim your medical source who has treated you reported that he had seen you regularly every 2 to 3 months for the past 2 years. * * *

* * * * *

(vi) * * * We will consider all evidence you submit and that we obtain from your medical sources and nonmedical sources. * * *

* * * * *

(2) * * *

(iv) * * *

(E) * * * If you are able to engage in substantial gainful activity, we will determine whether an attempt should be made to reconstruct those portions of the missing file that were relevant to our most recent favorable medical decision (*e.g.,* work history, medical evidence, and the results of consultative examinations). * * *

■ 66. In§ 416.994a, revise the second sentence of paragraph (a)(2), the first sentence in paragraph (c)(2), the fourth sentence of paragraph (d), and paragraph (i)(1) introductory text to read as follows:

§ 416.994a How we will determine whether your disability continues or ends, and whether you are and have been receiving treatment that is medically necessary and available, disabled children.

(a) * * *

(2) * * * We will consider all evidence you submit and that we obtain from your medical and nonmedical sources. * * *

* * * * *

(c) * * *

(2) The terms symptoms, signs, and laboratory findings are defined in § 416.902. * * *

(d) * * * If not, we will determine whether an attempt should be made to reconstruct those portions of the missing file that were relevant to our most recent favorable determination or decision (*e.g.,* school records, medical evidence, and the results of consultative examinations). * * *

* * * * *

(i) * * *

(1) *What we mean by treatment that is medically necessary.* Treatment that is medically necessary means treatment that is expected to improve or restore your functioning and that was prescribed by your medical source. If you do not have a medical source, we will decide whether there is treatment that is medically necessary that could have been prescribed by a medical source. The treatment may include (but is not limited to)—

* * * * *

Subpart J—Determinations of Disability

■ 67. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

§ 416.1015 [Amended]

■ 68. In § 416.1015, remove paragraph (d) and redesignate paragraphs (e) through (h) as paragraphs (d) through (g).

■ 69. Revise § 416.1016 to read as follows:

§ 416.1016 Medical consultants and psychological consultants.

(a) *What is a medical consultant?* A medical consultant is a licensed physician (see § 416.902(a)(1)) who is a member of a team that makes disability determinations in a State agency (see § 416.915), or who is a member of a team that makes disability determinations for us when we make disability determinations ourselves. The medical consultant completes the medical portion of the case review and any applicable residual functional capacity assessment about all physical impairment(s) in a claim.

(b) *What is a psychological consultant?* A psychological consultant is a licensed psychiatrist or psychologist (see § 416.902(a)(2)) who is a member of a team that makes disability determinations in a State agency (see § 416.1015), or who is a member of a team that makes disability determinations for us when we make disability determinations ourselves. The psychological consultant completes the medical portion of the case review and any applicable residual functional capacity assessment about all mental impairment(s) in a claim. When we are unable to obtain the services of a qualified psychiatrist or psychologist despite making every reasonable effort in a claim involving a mental impairment(s), a medical consultant who is not a psychiatrist will evaluate the mental impairment(s).

(c) *Cases involving both physical and mental impairments.* In a case where there is evidence of both physical and mental impairments, the medical consultant will evaluate the physical impairments in accordance with paragraph (a) of this section, and the psychological consultant will evaluate the mental impairment(s) in accordance with paragraph (b) of this section.

■ 70. Revise § 416.1017 to read as follows:

§ 416.1017 Reasonable efforts to obtain review by a physician, psychiatrist, and psychologist.

When the evidence of record indicates the existence of a physical impairment, the State agency must make every reasonable effort to ensure that a medical consultant completes the medical portion of the case review and any applicable residual functional capacity assessment. When the evidence of record indicates the existence of a mental impairment, the State agency must make every reasonable effort to ensure that a psychological consultant completes the medical portion of the case review and any applicable residual functional capacity assessment. The State agency must determine if additional physicians, psychiatrists, and psychologists are needed to make the necessary reviews. When it does not have sufficient resources to make the necessary reviews, the State agency must attempt to obtain the resources needed. If the State agency is unable to obtain additional physicians, psychiatrists, and psychologists because of low salary rates or fee schedules, it should attempt to raise the State agency's levels of compensation to meet the prevailing rates for these services. If these efforts are unsuccessful, the State agency will seek assistance from us. We will assist the State agency as necessary. We will also monitor the State agency's efforts and where the State agency is unable to obtain the necessary services, we will make every reasonable effort to provide the services using Federal resources.

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 71. The authority for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 72. In § 416.1406, revise the fourth sentence of paragraph (b)(2) to read as follows:

§ 416.1406 Testing modifications to the disability determination procedures.

* * * * *

(b) * * *

(2) * * * However, before an initial determination is made in any case where there is evidence which indicates the existence of a mental impairment, the decisionmaker will make every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment pursuant to our existing procedures (see § 416.1017). * * *

* * * * *

■ 73. In § 416.1442, revise paragraph (f)(1) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(f) * * *

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 416.913a, 416.920a, 416.926, and 416.946.

* * * * *

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Part III

The President

Proclamation 9486—Labor Day, 2016

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9486 of September 2, 2016

Labor Day, 2016

By the President of the United States of America

A Proclamation

The strongest middle class the world has ever known was not built overnight. It was achieved by men and women who believed that living up to the promise of this Nation meant more than hoping for the best—it meant toiling in the day, working through the night, and proving that theirs was a future worth fighting for. On Labor Day, we celebrate the grit and resilience of America's workers and their families, and we recommit to reaching for a world in which they are afforded the rights and opportunities they deserve.

America celebrated its first Labor Day in the late 19th century, when a group of industrial workers in New York joined in common purpose to celebrate their contributions to our country. Growing in numbers by the thousands, they went without their daily pay to march for their cause—setting in motion a labor movement that has inspired generations of Americans since. Clear-eyed and persistent, these hardworking union members, and those that followed in the path they forged, helped secure privileges we now take for granted—not only for themselves, but also for their friends and loved ones and neighbors. Their efforts brought about weekends and 40-hour workweeks, overtime pay and a minimum wage, and the collective bargaining rights that have empowered so many. Because of the battles they waged, our Nation benefits from health insurance and Medicare, Social Security, and other retirement programs. Their legacy is one we will never stop striving to uphold.

When I took office, our country faced the worst recession many of us had ever seen. But through the determination of our resilient workforce—the best workers on the planet—we have been able to lay a stronger foundation for our economy. Our auto industry has emerged stronger than ever, and the manufacturing sector, on the decline during the Great Recession and in its aftermath, has added over 800,000 new jobs. American businesses have added 15.1 million jobs since 2010. We are now in the middle of the longest streak of overall job growth on record, and wage growth has accelerated.

My priority since taking office has always been the well-being of the American people, and over the course of my Administration, I have taken steps to make sure everyone in our workforce is treated and compensated in ways that reflect the effort they put in. Whether by pursuing measures that can help ensure a fair day's pay for a hard day's work, updating occupational health and safety rules so that no one has to risk their life or health for their job, or working with State leaders to increase access to paid sick and family leave, we have made great strides on our journey to protecting and growing the middle class. We are working to increase and diversify apprenticeships as part of a job-driven skills agenda, and protect middle class savings by expanding retirement security. And by striving to close the gender pay gap, include more veterans and Americans with disabilities in our workforce, protect people who choose to organize a union in their workplaces, and prevent people from being denied opportunities because of who they are or who they love, we have moved closer to giving all our people an equal shot at making it in our global economy.

On Labor Day, we are reminded that jobs are about more than a paycheck. They afford us the ability to take care of our family, friends, and neighbors; to save for that well-deserved retirement; to give back to our communities and the country we would do anything for. Jobs allow us to dream, to look toward the future, and to encourage our children to do the same. Though there is much more to do until all our men and women have the rights and respect they need to thrive in their workplaces, on this occasion, let us recommit to standing together and resolving to create change. If we do, I am confident we can reach new heights for ourselves, for our children, and for generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 5, 2016, as Labor Day. I call upon all public officials and people of the United States to observe this day with appropriate programs, ceremonies, and activities that honor the contributions and resilience of working Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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